Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

In re H. Gerard Heimbecker, Petitioner

H. Gerard Heimbecker,
Plantiff-Petitioner,

v.

555 ASSOCIATES; 555 INVESTORS, L.P.; RONALD RUBIN;
FAITH ET FILS, INC.; FAITH ROBBINS;
DALE MULARTRICK; JAMES REMENTER; GERALD ARTH, ESQUIRE;
FOX ROTHSCHILD O'BRIEN & FRANKEL ; DENIS DICE, ESQUIRE;
HARVEY PENNINGTON CABOT, GRIFFITH & RENNEISEN, LTD.;
CNA FINANCIAL, INC; TRANSPORTATION INSURANCE COMPANY;
CONTINENTAL CASUALTY COMPANY AND
JOSEPH T. F. QUINN, ESQUIRE,
DEFENDANTS-RESPONDENTS.

PETITION FOR WRIT OF MANDAMUS
FROM THE THIRD CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF MANDAMUS

H. GERARD HEIMBECKER
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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Honorable Legrome D. Davis, United States District Court Judge for the Eastern District of Pennsylvania, abused his discretion in failing to disqualify himself under 28 U.S.C. §455(a) and (b)(4) and 28 U.S.C. §144.

2. Whether the Third Circuit Court of Appeals decision, when it determined ". . . we believe that a reasonable person would not view Judge Davis' alleged connections with the defendants as evidencing or creating an appearance of impartiality," but denied the writ of mandamus, is in conflict with this Court and other circuits court of appeals.

PARTIES

H. Gerard Heimbecker
Plaintiff-Petitioner

The Honorable Legrome D. Davis
United States District Court for the Eastern District of Pennsylvania
Respondent

555 Associates; 555 Investors, L.P.; Ronald Rubin; Faith et Fils, Inc.; Faith Robbins; Dale Mulartrick; James Rementer; Gerald Arth, Esquire; Fox Rothschild Frankel & O'Brien ;
Defendants

Gerald Arth, Esquire
Counsel for Defendants

Denis Dice, Esquire and Harvey Pennington Cabot, Griffith & Renneisen, Ltd.
Defendants

Samuel Pace, Esquire
Counsel for Defendants

CNA Financial, Inc; Transportation Insurance Company and Continental Casualty Company
Defendants

Geoffrey Kahn, Esquire
Counsel for Defendants

Joseph T.F. Quinn, Esquire,
Defendant

Henry Clinton, Esquire
Counsel for Defendant

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PRIOR OPINIONS

The opinions whose review are sought are unpublished and are reproduced in the appendix. The District Court opinion is reproduced in the Appendix at 2a. The Third Circuit Court of Appeals opinion is reproduced in the Appendix at 9a.

JURISDICTION

Petitioner seeks this Court's review of the judgment entered on January 29, 2003 by the United States Circuit Court of Appeals for the Third Circuit, by a Petition for Writ of Mandamus pursuant to the jurisdiction conferred by 28 U.S.C. §1651(a). This petition is timely filed in that it was mailed within ninety days of January 29, 2003, the date the petition for mandamus was denied in the court below. Rules 13.1 and 29.2.

Jurisdictional basis for the Third Circuit is 28 U.S.C.§1651(a) and Fed.R.App.P.21(a) and for the District Court is 28 U.S.C.§1331

CONSTITUTIONAL PROVISIONS

Article V, United States Constitution in pertinent part provides:

No person shall be deprived of life, liberty, or property, without due process of law.

Article XIV, Section 1, United States Constitution, in pertinent part provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Section 455 of title 28 United States Code, states in pertinent part:

Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

He shall also disqualify himself in the following circumstances.

(1) Where he has a personal bias or prejudice concerning a party . . ..

Section 144 of title 28 United States Code states :

Whenever a party to any proceeding in a district court makes or files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

STATEMENT OF THE CASE

Petitioner/plaintiff, H. Gerard Heimbecker, (hereinafter alternatively, "Mr. Heimbecker and /or petitioner/plaintiff"), initiated this proceeding on July 10, 2001 by filing a writ of summons, captioned ***Heimbecker v. 555 Associates, et al,*** Court of Common Pleas Delaware County, No. 01-7821. Mr. Heimbecker seeks recovery of monetary damages under several theories against the named defendants, including breach of contract; breach of the duty of good faith and fair dealing; and violations of the Civil Racketeer Influenced and Corrupt Organization Act, "RICO" under Sections 1962(a); 1962(b); 1962(c) and 1962(d). The complaint meticulously chronicles every scheme, and the ease with which the defendants and their attorneys compromised and subverted the system.

Mr. Heimbecker was served on December 14, 2001 with a Motion to Dismiss filed by defendants, 555 Associates; 555 Investors, L.P.; Ronald Rubin; Faith et Fils, Inc.; Faith Robbins; Dale Mulartrick; James Rementer; Gerald Arth, Esquire and Fox Rothschild O'Brien and Frankel, (hereinafter, "the Fox defendants") who are represented by Fox Rothschild Frankel and O'Brien, (hereinafter, "the Fox firm"). A second Motion to Dismiss was filed by defendants, Denis Dice, Esquire and Harvey Pennington Cabot Griffith and Renneisen, (hereinafter collectively "the Dice defendants"), who are represented by Dugan Brinkmann McGinnis and Pace (hereinafter, "Dugan Brinkmann"). A third Motion to Dismiss was filed by the defendants, CNA Financial, Inc., Transportation Insurance Company and Continental Casualty Insurance Company, (hereinafter, collectively, "the CNA defendants"), who are represented by the law firm of Ballard Spahr Andrews and Ingersoll, (hereinafter, "Ballard Spahr").

On December 31, 2001 Mr. Heimbecker filed a collective response to the three Motions to Dismiss. On March 28, 2002, defendant Joseph T. F. Quinn, (hereinafter, "defendant Quinn"), filed a Motion to Dismiss to which Mr. Heimbecker responded on April 11, 2002.

The Fox firm acted to remove the case from state to federal court and it was initially assigned to the Honorable Stewart Dalzell in December 2001. On May 23, 2002 the Clerk of Courts, at the direction of Chief Judge James T. Giles, ordered the case reassigned to the Honorable Legrome D. Davis, (hereinafter, "Judge Davis").

Judge Davis was a recent appointment to the federal bench receiving his commission on April 23, 2002. Unfamiliar with Judge Davis or his professional background, Mr. Heimbecker initiated a standard conflict check. An article in *The Legal Intelligencer*, dated January 24, 2002 entitled "Six Nominated For Federal Bench Seats" by Shannon P. Duffy, stated Judge Davis had been an associate at Ballard Spahr. The CNA defendants are represented by Ballard Spahr, thereby raising the issue of disqualification.

Further clarification of Judge Davis' relationship with Ballard Spahr was required. A review of the Pennsylvania Manual did not disclose Judge Davis' employment with Ballard Spahr. Since Judge Davis was newly confirmed, Mr. Heimbecker obtained Judge Davis' resume from the website of the United States Department of Justice, Office of Legal Policy, which failed to reveal his employment with Ballard Spahr. In order to determine whether the failure to list the Ballard Spahr employment was an error on the part of the Office of Legal Policy, Mr. Heimbecker contacted said office and was advised Judge Davis provided and verified the information. Further, the Office of Legal Policy confirmed the posting was accurate. Consequently, Judge Davis specifically omitted any reference to his Ballard Spahr employment. Mr. Heimbecker continued to search and obtained a 1999 *White House Press Release* which stated Judge Davis was a former associate at Ballard Spahr.

Concerned with the appearance of prejudice and bias that Judge Davis' contacts with a law firm so entrenched in this litigation presented, Mr. Heimbecker filed a Motion for Recusal pursuant to 28 U.S.C.A. §455. This motion was timely filed on May 27, 2002, five days after the case was reassigned and before Judge Davis made any decisions. By

order dated July 3, 2002 Judge Davis denied the Motion for Recusal, but admitted to his employment with Ballard Spahr. In his order, Judge Davis stated ". . .the previous contact between this court and the Ballard Spahr law firm . . . are extremely attenuated . . .". (App. at 9a). Also, it should be noted, Judge Davis went to great lengths addressing the issue of his former law-clerk who was married to the Ballard Spahr attorney representing the CNA defendants. This issue was never raised by Mr. Heimbecker. An examination of Judge Davis' "extremely attenuated" contacts with Ballard Spahr revealed a long term and continuous relationship with Edward G. Rendell, Esquire (hereinafter, "Mr. Rendell"). This year Mr. Rendell resigned as a partner of Ballard Spahr the day he was sworn in as Governor of the Commonwealth of Pennsylvania. Further, Mr. Rendell is the former General Chair of the Democrat National Committee, former Mayor of the City of Philadelphia and former District Attorney of the City of Philadelphia.

In 1978, then District Attorney Rendell appointed Judge Davis as an Assistant District Attorney. Mr. Rendell reappointed Judge Davis in 1981, a position he held until 1987. Following his tenure with District Attorney Rendell, Judge Davis was employed by the Office of General Counsel, University of Pennsylvania. Coincidentally, Mr. Rendell is not only an alumnus of the University of Pennsylvania, but also an instructor of government and politics courses at the University.

Furthermore, in July 1987 while running for the Philadelphia Court of Common Pleas, Judge Davis was employed by Mr. Rendell's law firm, Ballard Spahr, which made significant financial contributions to Judge Davis' election campaign. Following Judge Davis' election to the bench, then Mayor Rendell appointed Judge Davis as Chairperson of the Task Force on Alternatives to Incarceration.

A further conflict was brought to Judge Davis' attention. Specifically, this RICO action alleges Louis Fryman Esquire, (hereinafter, "Fryman"), Chairman of the Fox firm, conspired with the named defendants to obstruct justice and

suborn perjury at a district justice court on June 1, 1995. The results of the criminal hearing, which concerned the unlicenced real estate activity by the Rubin Organization, were later employed to perpetuate a scheme to defraud Mr. Heimbecker through his insurance policy. Consequently, as a result his personal involvement in the underlying events, Fryman is a witness in the present litigation.

Fryman holds a politically prominent position in Pennsylvania politics. He was Chairman of the Judicial Retention Election Sub-Committee of the Pennsylvania Bar Association; a member of the Special Committee on Judicial Selection and Reform of the Philadelphia Bar Association; a member of the Federal Courts Committee; a member of the Commission for Judicial Selection and Reform of the Senate of the Commonwealth of Pennsylvania and is presently Chairman of the Ethics Commission for the Commonwealth of Pennsylvania.

In 1996 and 1997, Fryman was appointed by United States Senators Arlen Specter and Rick Santorum to the Federal Judicial Nominating Commission of Pennsylvania. In 1997 through 2001, Judge Davis participated in the selection process before the same Commission. When this issue was presented to the Third Circuit Court of Appeals, the court questioned, ". . .whether [Fryman] personally kn[ew] Judge Davis, whether [Fryman] served on the Commission while Judge Davis was being considered, or whether [Fryman] made any decision, favorably or unfavorably, concerning Judge Davis' recommendation." (App. at 6a). When asked, Fryman failed to provide the answers. (App. at 49a). The extent of the relationship between Judge Davis and Fryman, i.e. whether Fryman personally recommended Judge Davis to his present life time appointment to the federal bench, is information both Judge Davis and Fryman possess, have a duty to disclose and have failed to do so.

To complete the circle, Ronald Rubin, a defendant in this action, was represented by Fryman in the criminal hearing on June 1, 1995 for real estate licencing violations. Rubin is the chairman of the Pennsylvania Real Estate Investment

Trust, which donated $245,000.00 to Mr. Rendell over the past three years.

Finally, Fryman is both the former law partner of the Honorable Edward R. Becker, Chief Judge of the Third Circuit Court of Appeals, as well as his brother-in-law. When asked to confirm the former professional and personal relationships, both Fryman and Judge Becker failed to come forward. (App. at 49a and 51a).

Rather than supporting Judge Davis' assertion of an "extremely attenuated" relationship, the information gleaned by Mr. Heimbecker substantiated the existence of long term relationships between Judge Davis, Ballard Spahr, Rendell and Fryman requiring disqualification. On July 20, 2002 Mr. Heimbecker filed a Motion for Reconsideration raising all the additional conflicts. On July 22, 2002 Judge Davis denied the Motion for Reconsideration before the Motion was even docketed. (App. at 8a).

Judge Davis' precipitous action, indicative of anger at being challenged, transforms his status from the appearance of prejudice and bias, to actual prejudice and bias. The question arose, why would a newly minted judge, when presented with such obvious conflicts, refuse to disqualify himself from presiding on this particular case. It became clear Judge Davis' misrepresented his relationship with Ballard Spahr. Further, Judge Davis went to great lengths to downplay, even hide, this relationship. Disqualification in this case may require recusal in future Ballard Spahr cases.

Seeking appellate review of Judge Davis' denial of the Motion to Recuse, on July 26, 2002 Mr. Heimbecker filed a Writ of Mandamus to the Third Circuit Court of Appeals, expecting the appellate court to recognize the appearance of partiality created by Judge Davis continuing to preside in this matter.

The Third Circuit, in reviewing Judge Davis' refusal to disqualify himself, agreed with the position set forth by Mr. Heimbecker, stating, ". . . we believe that a reasonable person would not view Judge Davis' alleged connections with the defendants as evidencing or creating an appearance of

impartiality," but then proceeded to deny the writ of mandamus. (App. at 6a). Since it is every litigant's right to have his case decided impartially by an independent judiciary, free from the appearance of prejudice and bias, the decision of the Third Circuit in allowing Judge Davis to remain on this case, seriously jeopardized Mr. Heimbecker's Constitutional right to procedural due process through the Fifth and the Fourteenth Amendments.

In the meantime, during the process of confirming Judge Davis' employment with Ballard Spahr, Mr. Heimbecker obtained a copy of the sworn questionnaire Judge Davis submitted to the Committee On The Judiciary of the United States Senate. (App. at 24a). Judge Davis swore he "...represented the interests of Raymark Corporation, a manufacturer of asbestos cloth, in depositions and trials in state and federal courts" during his employment with Ballard Spahr. (App. at 24a). Basically, Judge Davis' claim of "extremely attenuated contacts", as told to the United States Senate, would be his brief representation of this one client. One can not but help to question, when Judge Davis' legal experience consisted of nine years of criminal law, no known civil experience, he was suddenly trial counsel for Ballard Spahr in a major class action asbestos litigation in state and federal court. To quote former President Ronald Reagan, "[t]rust but verify."

Exhaustive measures were taken in an attempt to verify Judge Davis' sworn statements concerning his contacts with Ballard Spahr. A comprehensive search of the state and federal dockets did not reveal any entry of appearance by attorney Davis on behalf of Raymark Corporation.

By letter dated October 12, 2002 Mr. Heimbecker presented a simple request to Judge Davis, provide the docket numbers and dates of his court appearances in the trials in state and federal courts where he appeared as the lead counsel for Ballard Spahr. (App. at 20a). Judge Davis failed to respond. By letter dated November 16, 2002, Mr. Heimbecker reiterated his request. (App. at 23a). By letter dated November 18, 2002, a law clerk to Judge Davis stated, while

the writ of mandamus was pending before the Third Circuit Court of Appeals, "... *attempts to communicate directly with Judge Davis should be discontinued.*". (App. at 26a). Mr. Heimbecker, to his detriment, complied with the directive. Following the denial of the writ of mandamus on November 29, 2002, Mr. Heimbecker requested the information on February 26, 2003 to which Judge Davis failed to respond. (App. 52a).

Traditionally, the chief circuit judge is responsible for investigating judicial misbehavior. Pursuant to Judicial Misconduct Rule 19(A), and by letter dated November 27, 2002 Mr. Heimbecker advised the Honorable Edward R. Becker, Chief Judge of the Third Circuit Court of Appeals of Judge Davis' failure to provide the docket numbers and dates which would assure Mr. Heimbecker the contacts with Ballard Spahr were, in fact, "extremely attenuated."

(App. at 27a). Judge Becker failed to respond. By letter dated December 2, 2002 Mr. Heimbecker informed Judge Becker it was essential he receive the requested information, as he intended to file a Petition for Panel Rehearing. (App. at 30a). Judge Becker failed to respond. By letter dated December 7, 2002 Mr. Heimbecker again requested the information. (App. at 33a). Instead, he received instructions and forms from the Office of the Clerk for the Third Circuit Court of Appeals to file a complaint against Judge Davis, stating the Chief Judge "declines to consider your submissions under the authority of the more general Rule 19(A)." (App. at 35a). In order to submit the complaint, Mr. Heimbecker still needed the information. By letter dated December 30, 2002 Mr. Heimbecker again requested Judge Becker to provide the information. (App. at 38a). Judge Becker failed to respond.

Mr. Heimbecker, in searching the dockets, determined Arthur Makadon, Esquire (hereinafter, "Makadon") represented Raymark Corporation during Judge Davis' tenure at Ballard Spahr. By letter dated January 2, 2003 Mr. Heimbecker requested Makadon, Chairman of Ballard Spahr, to provide the docket numbers and dates. (App. at 40a). By letter dated January 6, 2003, another attorney from

Ballard Spahr responded on behalf of Makadon stating they, ". . . do not believe any useful purpose will be served by an exchange of correspondence between the parties." (App. at 42a). Mr. Heimbecker reiterated his request for the information from Makadon by letters dated January 8 and 27, 2003. (App. at 43a and 46a). Makadon failed to provide the information.

On December 13, 2002 Mr. Heimbecker filed a Petition for Panel Rehearing of the denial of the writ of mandamus. On January 29, 2003 the three judge panel, who received copies of all the aforesaid letters seeking the information clarifying Judge Davis "contacts" with Ballard Spahr, determined ". . . a reasonable person would not view Judge Davis' alleged connections with the defendants as evidencing or creating an appearance of [fairness]", but denied Mr. Heimbecker's Petition for Panel Rehearing. (App. at 1a).

No information exists in the public record to verify the representation Judge Davis made to the United States Senate in his sworn questionnaire regarding his affiliation with Ballard Spahr. It is obvious by the incriminating silence of Judge Davis, Judge Becker and Makadon, there are no docket numbers which reflect Judge Davis ". . . represented the interests of Raymark Corporation . . . in depositions and trials in state and federal courts". If true, the failure of Judge Davis to provide the information, Judge Becker to obtain the information and Makadon to produce the readily available docket numbers, reflects a dereliction of each man's duty to discharge their respective oaths. Under these circumstances, the only conclusion a reasonable person can draw is Judge Davis materially misrepresented his employment at Ballard Spahr to the United States Senate and Ballard Spahr is perpetuating that misrepresentation. Hence, Judge Davis' failure to provide the assurance his relationship with Ballard Spahr was, in fact, "extremely attenuated" demonstrates an actual prejudice and bias requiring disqualification pursuant to 28 U.S.C.A §144 and sua sponte disqualification under 28 U.S.C.A.§455(b)(1). Consequently, Mr. Heimbecker filed a Motion to Recuse pursuant to 28 U.S.C.A.§144 on January 31, 2003.

On January 30, 2003 Judge Davis, with jurisdiction restored, issued an order denying a motion pending since December 24, 2001, followed by an order dated February 3, 2003 denying Mr. Heimbecker's Motion for Remand to Delaware County.

Moreover, on February 4, 2003 Judge Davis scheduled oral argument on the Motion to Recuse and the Motions to Dismiss. On February 5th Mr. Heimbecker received a telephone call from Gerald Arth, Esquire, of the Fox firm, requesting the hearing be reschedule to a later date, to which he agreed. Mr. Heimbecker also received a call from Marcella El-Shabazz, Judge Davis's Courtroom Deputy, regarding the same matter. On February 11, 2003, a notice was docketed scheduling oral argument for March 5, 2003.

If Judge Davis denied the motion to recuse, Mr. Heimbecker intended to seek appellate review. Obviously, by scheduling both arguments concurrently, Judge Davis intended to deny Mr. Heimbecker any opportunity to seek such review. Accordingly, to protect his appellate rights, on February 15, 2003 Mr. Heimbecker filed a Motion to Stay, requesting argument be limited to the Motion to Recuse. On February 27, 2003 Judge Davis denied the Motion to Stay and ordered oral argument on both motions to proceed as scheduled on March 5, 2003.

Seeking appellate review of this decision, Mr. Heimbecker filed a Petition for Writ of Mandamus to the Third Circuit Court of Appeals on March 2, 2003. As a result, the issue of whether the March 5th hearing should go forward rested with the Third Circuit Court of Appeals. Previously, by letter dated November 18, 2002, Judge Davis instructed Mr. Heimbecker, while a writ of mandamus was pending with the Third Circuit Court of Appeals, any ". . . attempt[] to communicate directly with Judge Davis should be discontinued." (App. at 26a). Mr. Heimbecker received no communication from either Judge Davis' courtroom deputy or any other member of Judge Davis' staff indicating Judge Davis would be proceeding with the March 5th hearing.

Notwithstanding the fact jurisdiction rested with the Third Circuit Court of Appeals, Judge Davis held the hearing on March 5th without Mr. Heimbecker. At that hearing, Judge Davis advised the defendants' various counsel, who for some reason did know the hearing would go forward, "[m]y staff has communicated with the 3rd Circuit and we're here today with the understanding and agreement of the 3rd Circuit". (App. at 18a). Judge Davis' communication with the Third Circuit Court of Appeals violates F.R.A.P.21(b)(4) which states in part, "[t]he trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals." Id. Mr. Heimbecker is unaware of any order from the court of appeals inviting the respondent, Judge Davis, to communicate with the court concerning the status of the writ of mandamus and the March 5th hearing.

Clearly jurisdiction rested with the appellate court and guided by Judge Davis' prior instructions Mr. Heimbecker did not attend the March 5th hearing. In his absence, Judge Davis engaged in ex parte communication with the court of appeals and summarily dismissed Mr. Heimbecker's case. Consequently, such conduct is an egregious violation of Mr. Heimbecker's procedural due process rights under the Constitution, that, in and of itself, justifies disqualification.

On March 27, 2003, with jurisdiction still reposing with the Third Circuit Court of Appeals, Judge Davis entered an order dismissing Mr. Heimbecker's case in its entirety. Judge Davis' Memorandum displays a level of antipathy toward Mr. Heimbecker which affected his ability to apply the law. For example, instead of accepting all well plead facts as true, Judge Davis portrayed the outrageous conduct of attorneys Quinn and Dice, as set forth in Mr. Heimbecker's complaint, as the conduct of Mr. Heimbecker rather than that of his attorneys. In doing so, Judge Davis acknowledged the conduct of Quinn and Dice was egregious but then proceeded to dismiss Mr. Heimbecker's case.

REASONS FOR GRANTING THE WRIT

A. The Guarantee of an Impartial Judge is Fundamental to the Constitutional Right to Procedural Due Process and When Enforced, Ensures a Fair and Effective Judicial System.

The caption inscribed above the Supreme Court building reads, "Equal Justice Under the Law". The Constitution ensures this concept embodies the guiding principles of our society. In doing so, it is essential, an individual's case should be decided impartially by an independent judiciary with decisional independence." ***See*** Frances Kahn Zemans, ***The Accountable Judge: Guardian of Judicial Independence,*** 72 S.Cal.L.Rev. 625, 646 (1999).

It is well settled, the Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. "An impartial judge is a basic due process requirement." ***United States v. Nathan,*** 188 F.3d 190, 216 (3d Cir. 1999), ***citing Alexander v. Primercia Holdings, Inc.,*** 10 F.3d 155 (3d Cir. 1993); ***Haines v. Liggett Group, Inc.,*** 975 F.2d 81, 98 (3d Cir. 1992). In the case of ***In re Murchison,*** 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955), Justice Black wrote: "A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to present even the probability of unfairness." ***Id.***

"[The] requirement of neutrality, . . . safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process.". ***Marshall v. Jerrico,*** 466 U.S. 238, 242, 1005 S.Ct. 1610, 1613, 64 L.Ed.2d 182 (1980).

> The neutrality requirement helps guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. ***See Mathews v. Eldridge,*** 424 U.S. 319, 344, 96 S.Ct. 893, 907, 47 L.Ed.2d 18

(1976). At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," ***Joint Anti Fascist Committee v. McGrath,*** 341 U.S. 123, 172 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

Id. at 242-43.

A guarantee of an impartial judge is essential to a fair and effective judicial system. ***Ward v. Village of Monroeville,*** 409 U.S. 57, 62 (1972) (Constitution requires a neutral and detached judge); ***In re Murchison,*** 349 U.S. at 136 (1955). In addition to guarding against judicial bias-in-fact, Congress has been vigilant to ensure the "appearance of impartiality." H.R. Rep.No. 1453, 93d Cong., 2d Sess.1, reprinted in 1974 U.S.C.C.A.N., 6351,6354 ("House Report"). "[T]he protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system." ***Potashnick v. Port City Constr.Co.,*** 609 F.2d 1101, 1111 (5th Cir.), ***cert. denied,*** 449 U.S. 820 (1980) (***quoting United States v. Columbia Broadcasting Systems Inc.,*** 497 F.2d 107, 109 (5th Cir.); ***see also Liljeberg v. Health Serv. Acquisition Corp.,*** 486 U.S. 847, 865 (1988) ("it is critically important . . . to identify the facts that might reasonably cause an objective observer to question [a judge's] impartiality").

The "appearance of impartiality is virtually as important" to the smooth functioning of a fair judicial system as is the fact of impartiality. ***Webbe v. McGhie Land Title Co.,*** 549 F.2d 1358, 1361 (10th Cir. 1977). To insure freedom from both bias-in-fact and the appearance of bias, Congress has adopted two alternate and independent statutes which require judicial disqualification for bias, 28 U.S.C. §144 and 28 U.S.C. §455.

When Judge Davis was initially assigned to preside in this matter, Mr. Heimbecker's primary concern was the appearance of prejudice and bias a reasonable person would perceive for several reasons. First, Judge Davis has significant financial ties to Ballard Spahr. Those ties involve financial contributions to his campaign for the Court of Common Pleas and the financial support Judge Davis received in the form of employment, while a candidate. Second, Mr. Rendell has obviously been a mentor to Judge Davis throughout his entire career and a reasonable person would perceive a debt owed to a partner in a law firm and the law firm itself as inseparable. Third, Judge Davis' reliance on Fryman's support in seeking a life time appointment to the federal bench can not be ignored.

To complete the circle, Ronald Rubin, a defendant in this action, was represented by Fryman in the criminal hearing on June 1, 1995 for real estate licencing violations. Rubin is the chairman of the Pennsylvania Real Estate Investment Trust, which donated $245,000.00 to Mr. Rendell over the past three years. Taken as a whole, these facts present the appearance of prejudice and bias requiring disqualification.

The Third Circuit, in reviewing Judge Davis' refusal to disqualify himself, agreed with the position set forth by Mr. Heimbecker, stating, ". . . we believe that a reasonable person would not view Judge Davis' alleged connections with the defendants as evidencing or creating an appearance of impartiality,"(app. at 6a), but then proceeded to deny the writ of mandamus. Since it is every litigant's right to have his case decided impartially by an independent judiciary, free from the appearance of prejudice and bias, the decision of the Third Circuit in allowing Judge Davis to remain on this case, seriously jeopardized Mr. Heimbecker's Constitutional right to procedural due process through the Fifth and the Fourteenth Amendments.

B. In Applying the Relevant Standards for Recusal, Disqualification is Appropriate When the Charges are Supported By Facts Providing a Reasonable Basis to Doubt the Judge's Impartiality.

A recusal motion is a serious matter, "strik[ing] at the integrity of the judicial process." ***In re International Business Machines Corp.,*** 618 F.2d 923, 927 (2d Cir. 1980) ***("In re IBM").*** The applicable standard for reviewing a denial of a recusal motion pursuant to 28 U.S.C. §455(a) is an abuse of discretion. ***United States v. Smith,*** 997 F.2d 674 (10th Cir. 1993); ***United States v. Burger,*** 964 F.2d 1065, 1070 (10th Cir. 1992); ***Weatherhead v. Globe,*** 832 F.2d 1226, 1227 (10th Cir. 1987); ***In re Drexel Burnham Lambert, Inc.,*** 861 F.2d 1307, 1312 (2d Cir. 1988). Application of this standard requires a balancing of two competing policy considerations. First, the "courts must not only be, but seem to be, free of bias or prejudice", ***In re United States,*** 158 F.3d 26, 30 (1st Cir. 1998) ***(quoting In re United States,*** 666 F.2d 690, 694 (1st Cir. 1981); and second, the fear recusal on demand would provide litigants with a veto against unwanted judges. ***Id.*** Consequently, disqualification is appropriate when the charge is supported by a factual basis and when the facts asserted "provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the judge's impartiality." ***In re United States,*** 666 F.2d at 695.

District court judges are routinely allowed a "range of discretion" in the decision not to recuse. ***Id.*** However, a district court should exercise this discretion with the understanding, "if the question of whether §455(a) requires disqualification is a close one, the balance tips in favor of recusal." ***Nichols v. Alley,*** 71 F.3d 347, 352 (10th Cir. 1995).

In this case, the scales tipped in favor of recusal with the simple standard requiring only the appearance of prejudice and bias. Only an unreasonable person, when faced with the myriad of facts demonstrating partiality, refuse to disqualify himself, and ergo, abuse his discretion. This abuse is only surpassed by the Third Circuit Court of Appeals, in

determining Judge Davis' ". . . connections with the defendants [did] not create [ ] an appearance of impartiality," (app. at 6a), but then allowing Judge Davis to dismiss the case is inconsistent with the application of the standard necessary to require disqualification. Hence, a reasonable person, not the politically astute individual, would not accept the intertwining of politics with the judiciary and allow a judge who has failed to display any impartiality to remain on the case.

C. To Insure Freedom from Both Bias-in-Fact and the Appearance of Bias, Congress has Adopted Two Alternate and Independent Statutes Which Require Judicial Disqualification for Bias, 28 U.S.C. §144 and 28 U.S.C. §455.

Every person who is to become a member of the federal judiciary takes the oath prescribed by 28 U.S.C. §453 requiring one "administer justice without respect to persons, and do equal right to the poor and to the rich, 'faithfully and impartially discharge and perform all the duties incumbent upon [him] . . . agreeably to the Constitution and the laws of the United States." 28 U.S.C. §453. Consequently, it is essential all litigants have their cases heard by judges mindful of this oath. ***Laird v. Tatum,*** 409 U.S. 824, 838, 93 S.Ct. 7, 15, 34 L.Ed 2d 50 (1972).

To insure this, in 1911, Congress adopted 28 U.S.C. §144, which provides,

> Whenever a party to any proceeding in a district court makes or files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reason for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it

> within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S.C. §144. Courts have uniformly held the language "personal bias or prejudice" in §144 required recusal only for bias personally acquired, as opposed to judicial bias. ***United States v. Grinnell Corp.,*** 384 U.S. 563, 583 (1966).

Congress adopted §455 in 1970, and amended it in 1974 to "improve judicial machinery by . . . broaden[ing] and clarify[ing] the grounds for judicial disqualification." House Report at 6357.

Section 455 of title 28 United States Code, states in pertinent part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
> (b) He shall also disqualify himself in the following circumstances.
> (1) Where he has a personal bias or prejudice concerning a party . . ..

28 U.S.C. §455(a)(b)(1).

Section 455(a), as amended, abandoned the "duty to sit" rule, which urged judges to resolve questions of recusal in favor of a "duty to sit." House Report at 6355. The new §455(a) requires a judge to recuse himself in any proceeding in which his impartiality might reasonably be questioned. 28 U.S.C. §455(a). Indeed, §455(a) recognizes the appearance of impartiality is so central to notions of justice that any question of bias is sufficient to require recusal under that section. ***See Liljeberg,*** 486 U.S. at 861 (requiring recusal even where judge was unaware of disqualifying circumstances). ***Robert v. Bailar,*** 625 F.2d 125, 129 (6th Cir. 1980) (disqualification required even where question is close); ***Potashnick,*** 609 F.2d at 1111 ("[a]ny question of a judge's impartiality threatens the purity of the judicial process and its institutions").

Section 455(b) enumerates five instances which mandate the disqualification of a judge; the only subdivision relevant to this case is §455(b)(1), which requires recusal where a judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts discerning the proceeding." 28 U.S.C. §455(b)(1).

Disqualification, in this case, is necessary under all three provisions. Section §455 (a) recognizes the appearance of impartiality is so central to notions of justice any question of prejudice or bias requires recusal. Judge Davis' initial attempt to conceal his prior association with Ballard Spahr, i.e. his published resumes lacked any reference to Ballard Spahr, when discovered, required disqualification. Further, once Mr. Heimbecker discovered the material misrepresentations Judge Davis made to the Senate regarding his employment at Ballard Spahr, i.e. whether Judge Davis ever entered his appearance on behalf of Raymark Corporation, an actual prejudice and bias arose from an extra judicial source, requiring disqualification. Finally, under §455(b)(4), Judge Davis should have sua sponte disqualified himself once he failed to provide the docket numbers and dates at Mr. Heimbecker's request. This failure was a violation of the Code of Judicial Conduct.

The American Bar Association in 1990, in revising the Code of Judicial Conduct, added an important provision regarding judicial disqualification in the commentary to the Code. The ABA added judges are to disclose ". . . on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge does not personally feel that the information implies that recusal is necessary." ***Model Code of Judicial Conduct*** 3E (1990).

D. Recusal is Necessary Pursuant to §455 because the Facts Presented Would Lead a Reasonable Person to Infer Bias or Prejudice Exists Foreclosing Impartiality of Judgment.

"Section 455(a) is a self-enforcing statutory standard for disqualification for a judge." ***United States v. Miranne,*** 688 F.2d 980, 985 (5th Cir. 1982). The United States Court of Appeals for the Fifth Circuit has noted an actual demonstrated prejudice need not exist under §455 to warrant a judge to recuse himself when his impartiality might reasonably be questioned. ***Id.*** Consequently, §455 is the general safeguard for the appearance of impartiality. ***Lovoi v. Treasure Chest Casino,*** (1998 WL 1986950 E.D. La.). As the United States Supreme Court stated, "what matters under §455(a), 'is not the reality of bias or prejudice but its appearance.'" ***Microsoft Corporation v. United States,*** et al, 530 U.S. 1301, 121 S.Ct. 25, 26, 147 L.Ed.2d 1048 (2000), ***citing, Liteky v. United States,*** 510 U.S. 540, 548, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994) (a party seeking recusal need not show actual bias on the part of the court, only the possibility of bias.).

In doing so, §455 employs a reasonable man standard. ***Potashnick v. Port City Constr. Co.,*** 609 F.2d 1101, 1111 (5th Cir.), cert. denied, 449 U.S. 820 (1980). ***See generally*** 13A Charles A. Wright et al., ***Federal Practice and Procedure*** §3542 at 557 (1984, Supp. 1992 and Supp. 2003).

"The standard under §455 is objective and requires the court to ask 'whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality.'" ***Bolin v. Story,*** 225 F.3d 1234, 1239 (11th Cir. 2000), ***quoting McWhorter v. City of Birmingham,*** 917 F.2d 570, 578 (11th Cir. 1990). ***MDCM Holdings, Inc. v. Credit Suisse First Boston Corp.,*** D.C.N.Y. 2002, 205 F.Supp.2d 158, 161 n.8, ***quoting Wright, Miller & Cooper.***

The test is whether the facts presented, assuming their truth, would lead a reasonable person reasonably to infer

bias or prejudice exists which would foreclose impartiality of judgment. ***United States v. Corr,*** 434 F.Supp. 408, 412-413 (S.D.N.Y. 1977) ***(See State of Idaho v. Freeman,*** 478 F.Supp. 33 (D. Idaho 1979). ***Baker v. City of Detroit,*** 458 F.Supp. 374 (S.D. Mich. 1978); ***United States v. Conforte,*** 457 F.Supp. 641 (D. Nev. 1978). Therefore, under §455(a), "if a 'reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality' under the applicable standard, then the judge must recuse." ***United States v. Antar,*** 53 F.3d 568, 574 (3d Cir. 1995) ***(quoting, In Re Larson,*** 43 F.3d 410, 415 (8th Cir. 1994).

Quite simply, in applying the test under §455 to the facts in this case, Judge Davis should have disqualified himself at the first opportunity. In fact, the Third Circuit agreed stating, ". . . we believe a reasonable person would not view Judge Davis' alleged connections with the defendants as evidencing or creating an appearance of impartiality," but denied the writ of mandamus. The decision of the Third Circuit, in allowing Judge Davis to remain on this case, seriously jeopardized Mr. Heimbecker's rights to procedural due process.

E. Recusal is Essential Pursuant to §144 because the Court's conduct has Manifested Personal Bias and Prejudice.

Courts have uniformly held the language "personal bias or prejudice" in §144 required recusal only for bias personally acquired, as opposed to judicial bias. ***United States v. Grinnell Corp.,*** 384 U.S. 563, 583 (1966). Section 144 provides a judge shall recuse himself when a party has filed a timely and legally sufficient affidavit showing the judge before whom the matter is pending has a personal prejudice against the party or a bias in favor of any adverse party. ***Apple v. Jewish Hospital and Medical Center,*** 829 F.2d 326, 333 (2d Cir. 1987). Recusal motions are to be lodged in a timely fashion because the absence of such a requirement would result in increased instances of wasted judicial time and resources, ***In re IBM,*** 618 F.2d at 933, and a heightened risk litigants would use recusal motions for strategic

purposes. ***Ex parte American Steel Barrel Co. and Seaman,*** 230 U.S. 35, 44 , 33 S.Ct. 1007, 1010, 57 L.Ed. 1379 (1913).

"[I]t is well settled that a party must raise its claim of a district court's disqualification at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim." ***Apple,*** 829 F.2d at 333; ***see also In re Martin Trigona,*** 573 F.Supp. 1237, 1244 (D. Conn. 1983). (One seeking recusal must do so at the earliest possible moment after he obtains the knowledge that forms the basis for the motion."). Ultimately, then, all petitions for recusal require a threshold requirement of good faith on the part of the petitioner, which is implicit in the timeliness of the motion. ***In re San Juan Dupont Plaza Hotel Fire Litigation,*** 129 F.R.D. 409, 418 (D. Puerto Rico 1989).

In this case, the issue of Judge Davis misrepresentations regarding his employment with Ballard Spahr was presented within five days of the reassignment of this case from Judge Dalzell to Judge Davis. At no time did Mr. Heimbecker sit back with the knowledge that formed the basis for both recusal motions and do nothing. Instead, Mr. Heimbecker aggressively sought the cooperation of Judge Davis, Ballard Spahr, Fryman and even Judge Becker to clarify and confirm the information Mr. Heimbecker has gleaned. Rather than facilitate, all have obstructed the search for the truth.

The Supreme Court explained, with reference to the statutory predecessor to section 144.

> It is a provision obviously not applicable save in those rare instances in which the affiant is able to state facts which tend to show not merely adverse rulings already made, which may be right or wrong, but facts and reasons which tend to show personal bias or prejudice. It was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise, but to prevent his future action in the pending cause.

Ex parte Am. Steel Barrel Co., 230 U.S. at 43-44, 33 S.Ct. at 1010.

The basic doctrine was repeated in ***Berger v. United States,*** 255 U.S. 22, 31 41 S.Ct. 230, 232, 65 L.Ed. 481 (1921), and has been cited by the Court of Appeals as support for "the general proposition that the bias which requires recusal must be personal and cannot rest upon trial rulings or conduct." ***In re IBM,*** 618 F.2d at 929. See also ***Davis v. Cities Service Oil Co.,*** 420 F.2d 1278, 1282 (10th Cir. 1970) (allegedly cumulative revelation of bias does not justify untimeliness of disqualification motion; "[p]romptness in asserting disqualification is required to prevent a party from awaiting the outcome before taking action."); ***Peckham v. Ronrico Corp.,*** 288 F.2d 841, 843 (1st Cir. 1961) (litigant should not be permitted to "sampl[e] the temper of the court before deciding whether or not to file an affidavit of prejudice.").

The disqualification procedure set forth in §144 not only requires the affidavit filed by a party to be timely but must also be legally sufficient. ***McCann v. Communications Design Corporation,*** 775 F. Supp. 1506, 1527 (D. Conn. 1991). Our Court of Appeals has held sections 144, 455(a) and 455(b)(1) look to extrajudicial conduct as the basis for determining whether a judge should disqualify himself, not to "what [the] judge has learned from or done in the proceedings before him," ***King v. United States,*** 576 F.2d 432, 437 (2d Cir. 1978), or, in other words, conduct which arises within a judicial context. ***Apple,*** 829 F.2d at 333; ***In re IBM,*** 618 F.2d at 928-29.

A trial judge's alleged prejudice "must arise by virtue of some factor which creates partiality arising outside of the events which occur in the [case] itself." ***In re IBM,*** 618 F.2d at 927; ***see id.*** at 928-29; ***King,*** 576 F.2d at 437. By "extrajudicial conduct" the cases do not mean to say conduct arising geographically outside of the courtroom, but rather, conduct arising from something outside of rulings or statements made by the trial judge in the course of his judicial duties. ***Id.; Allen-Myland v. International Business Machines***

Corp., 709 F.Supp. 491, 494 (S.D.N.Y. 1989).

The test is the same under both sections 144 and 455: "'The determination should be made on the basis of conduct extrajudicial in nature as distinguished from conduct with a judicial context.'" ***In re IBM,*** 618 F.2d at 928 (quoting ***Davis v. Board of School Comm'rs,*** 517 F.2d 1044, 1052 (5th Cir. 1975), ***cert. denied,*** 425 U.S. 944, 96 S.Ct. 1685, 48 L.Ed.2d 188 (1976)). Or, as the Supreme Court has held, "[t]he alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." ***United States v. Grinnell Corp.,*** 384 U.S. 563, 86 S.Ct. 1698, 1710, 16 L.Ed.2d 778 (1966). While the Court of Appeals concedes "that conduct in the course of a trial might be relevant to indicate a bias that can only be explained as a personal prejudice against a party, the fact is that no case in this circuit has ever found such bias on the basis of a trial court's rulings or conduct. This reticence . . . is well justified." ***In re IBM,*** 618 F.2d at 928 n.6.

Most important, the source of the partiality is always essential to the analysis of a disqualification motion. Thus, the facts in the affidavit "must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." ***Berger v. United States,*** 255 U.S. at 41.

If the Third Circuit Court of Appeals had disqualified Judge Davis when Mr. Heimbecker sought relief, the conduct in the course of the proceedings would not be relevant. As a result of this failure, despite jurisdiction resting with the Third Circuit, Judge Davis' prior instructions to Mr. Heimbecker not to communicate with him while a writ of mandamus was pending and his ex parte communication with the court of appeals, Judge Davis dismissed Mr. Heimbecker's case. Such conduct is egregious, a violation of Mr. Heimbecker's procedural due process rights under the United States Constitution, that, in and of itself, justifies disqualification.

F. The Failure of the Trial Court and the Third Circuit Court of Appeals to Comply with §144 and §455 Irreparably Harms the Public Confidence in the Judiciary.

Canon 2A of the ***Code of Conduct for United States Judges*** states, "a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence and impartiality of the judiciary. Thus 28 U.S.C. §455(a) requires "[a]ny justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. §455(a).

"Moreover advancement of the purpose of the provision [is] to promote public confidence in the integrity of the judicial process, ***see,*** Rep. No. 93-419,p.5 (1973); H.R.Rep.No. 93-1453,p.5 (1974) does not depend upon whether or not the judge actually knew of facts creating an appearance of impartiality, so long as the public might reasonably believe that he or she knew." ***Liljeberg v. Health Service Acquisition Corp.,*** 486 U.S. 847, 859-60, 108 S.Ct. 2194, 2202-03, 100 L.Ed.2d 855 (1988).

Congress expressly intended the amended §455 to promote public confidence in the impartiality of the courts by requiring judicial disqualification when a judge's impartiality could reasonably be questioned." ***United States v. State of Alabama,*** 2 F.2d 1532, 1541 (11th Cir. 1987), ***cert. denied sub nom., Board of Trustees of Alabama State University v. Aubrun University,*** 108 S.Ct. 2857 (1988). "The general language of subsection (a) was designed to promote public confidence in the integrity of the judicial process by replacing the subjective ['in the opinion of the judge'] standard with an objective test." ***Liljeberg,*** 486 U.S. at 858 n.7. The Eleventh Circuit agreed holding "under §455(a) an actual demonstrated prejudice need not exist in order for a judge to recuse himself . . .". ***United States v. Alabama,*** 2 F.2d at 1541.

In ***United States v. Cooley,*** 1 F.3d 985, 993 (10th Cir.

1993), the Court pointed out, "[i]n applying §455(a), the judges actual state of mind, purity of heart, incorruptibility, or lack of partiality are not the issue." ***Cooley,*** 1 F.3d at 993. "The standard is purely objective. The inquiry is limited to outward manifestations and reasonable inferences drawn therefrom. In applying the test, the initial inquiry is whether a reasonable factual basis exists for calling the judges impartiality into question." ***Id.***

As a result, under §455(a), judges are disqualified from continuing to hear any case where a reasonable person could question their objectivity. Most importantly, ". . . a judge has a continuing duty to recuse before, during, or in some circumstances, after a proceeding, if the judge concludes that sufficient factual grounds exist to cause an objective observer reasonably to question the judge's impartiality." ***U.S. v. Cooley,*** 1 F.3d 985, 992 (10th Cir., 1993), ***citing, Liljeberg v. Health Services Acquisition Corp.,*** 486 U.S. 847, 861, 108 S.Ct. 2194, 2203, 100 L.Ed.2d 855 (1988).

Ultimately, §455(a), by providing for recusal when a judge's impartiality may reasonably be questioned, the public's confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who appears to be tainted requires "justice must satisfy the appearance of justice" and thus protects the rights of the citizens. ***Alexander v. Primerica Holdings Inc.,*** 10 F.3d 155, 162 (3rd Cir. 1993) ***quoting In re Asbestos Litigation,*** 977 F.2d 764, 776 (3rd Cir. 1992).

Finally, the purpose of 28 U.S.C. §455 (a) and (b)(4) and 28 U.S.C. §144 were enacted with the intention of protecting the public confidence in the integrity of the judiciary. The public's confidence in the judiciary is only protected when the individual, standing before this court, is accorded due process. Due process entitles a person to an impartial and disinterested tribunal. The failure of Judge Davis to disqualify himself, the inaction on the part of the Third Circuit Court of Appeals is inconsistent with the wording, history and policy underlying sections 455 (a) and (b)(4) and 144.

CONCLUSION

Mr. Heimbecker has set forth a myriad of facts, when applied collectively, require the disqualification of Judge Davis. This Court can not ignore the ties existing between the political, legal and the judicial power bases when they affect the rights of the individual. Judges and the society as a whole must be concerned about the accountability of a federal judge in a system which immunizes him from criticism for prejudice merely because it arises during the course of the proceedings. Specifically, Judge Davis' conduct in misrepresenting his prior employment with Ballard Spahr presented the appearance of prejudice and bias. Further, his ongoing egregious conduct manifests an actual prejudice and bias, foreclosing any impartiality. It is the duty of the judiciary to enforce the legislatively mandated provisions sections 455 (a) and (b)(4) and 144 and disqualify Judge Davis.

Respectfully submitted,

H. Gerard Heimbecker

Date: April 26, 2003 H. Gerard Heimbecker, Petitioner

Supreme Ct.
FILED
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021596 APR 26 2003
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

In re H. Gerard Heimbecker, Petitioner

H. Gerard Heimbecker,
Plantiff-Petitioner,

v.

555 ASSOCIATES; 555 INVESTORS, L.P.; RONALD RUBIN;
FAITH ET FILS, INC.; FAITH ROBBINS;
DALE MULARTRICK; JAMES REMENTER; GERALD ARTH, ESQUIRE;
FOX ROTHSCHILD O'BRIEN & FRANKEL ; DENIS DICE, ESQUIRE;
HARVEY PENNINGTON CABOT, GRIFFITH & RENNEISEN, LTD.;
CNA FINANCIAL, INC; TRANSPORTATION INSURANCE COMPANY;
CONTINENTAL CASUALTY COMPANY AND
JOSEPH T. F. QUINN, ESQUIRE,
DEFENDANTS-RESPONDENTS.

PETITION FOR WRIT OF MANDAMUS
FROM THE THIRD CIRCUIT COURT OF APPEALS

APPENDIX
PETITION FOR WRIT OF MANDAMUS

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PETITIONER, PRO SE

57 pp

THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-3046

IN RE: H. GERARD HEIMBECKER,
Petitioner

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. Ol-cv-06140)

SUR PETITION FOR PANEL REHEAR1NG

BEFORE: NYGAARD. ROTH and BARRY, Circuit Judges

The Petition for Panel Rehearing filed by the Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the Petition for Pane! Rehearing is hereby DENIED.

It is so ordered.

By the Court,

/s/Nygarrd
United States Circuit Judge

DATE: JAN 29 2003

CLW/cc: Mr. H. Gerard Heimbecker
Gerald Arth, Esq.
Samuel J. Pace Jr. Esq.
Geoffrey H. Kahn, Esq.
Henry M. Clinton, Esq.

UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-3046

IN RE: GERARD HEIMBECKER,

Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the
Eastern District of Pennsylvania (Related to E.D.Pa.
Civ. No. Ol-cv-06140)

District judge: Honorable Legrome D. Davis
Submitted Under Rule 21, Fed.R.App.P.
August 29, 2002

Before: NYGAARD, ROTH and BARRY, Circuit Judges

(Filed: November 29, 2002)

OPINION

PER CURIAM

Petitioner H. Gerard Heimbecker has filed a petition for a writ of mandamus seeking to compel Judge Legrome Davis of the United States District Court for the

Eastern District of Pennsylvania to disqualify himself from presiding over petitioners civil proceedings. For the reasons set forth below, we will deny the petition.

According to Heimbecker's petition, on July 10,2001, he instituted a civil action against several defendants in the Court of Common Pleas of Delaware County. He seeks money damages for breach of contract, breach of the duty of good faith and fair dealing, and violations of the RICO statute. In December 2001, the case was removed to the Eastern District, where, after defendants filed motions to dismiss, it was reassigned to recently-commissioned Judge Davis.[1] Heimbecker immediately filed a motion to recuse Judge Davis from the case pursuant to 28 U.SC. § 455(a). That motion was denied, as was Heimbedker's subsequent motion for reconsideration.

This Court's mandamus power includes the power to order a District Court to recuse in accordance with § 455. See In re Antar. 71 F.3d 97» 101 (3d Cir. W5); Alexander v. Primerica Holdings, Inc., 10 F.3d 155, 163 (3d Cir. 1993). Where, as here, a party has made a challenge to the judge's failure to recuse, the Court reviews the judge‘s decision to hear the case under an abuse of discretion standard, see In re.Antar. 71 P.3d at 101, while being mindful that mandamus is an extraordinary remedy and "courts of appeals must be chary in exercising that power." In re School Asbestos Litigation> 977 F.2d 764,772 (3d Cir. {992). A judge must recuse from any proceeding in which the judge's impartiality might be reasonably questioned, see 28 U.S.C. § 455(a), i.e. "where a

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1 Judge Davis was confirmed by the Senate on April 18, 2002, and received commission on April 23,2002.

reasonable [person] knowing all the circumstances would harbor doubts concerning the judged impartiality." Edelstein v.Wilentz, 812 P. 2d 128, 131 (3d Cir. 1987).

Heimbecker does not allege that Judge Davis has acted arbitrarily or is biased against him. Nor do his allegations reflect a disagreement with Judge Davis' rulings in the case. Rather, in his petition for writ of mandamus, Heimbecker contends that "an objective, knowledgeable member of the public would ... doubt[]... [Judge Davis'] impartiality" because of apparent conflicts of interest. Specifically, Heimbecker complains that Judge Davis (1) worked for a law firm now representing some of the defendants in the case; (2) was appointed to work in the Philadelphia District Attorney's Office in 1978 and 1981 by then-District Attorney Ed Rendell, who is now a partner in that law firm; (3) was recommended by the Federal Judicial Nominating Commission of Pennsylvania, an organization of which one of the witnesses in this case was a member in 1996 and 1997.

The District Court did not abuse its discretion by denying Heimbecker's motion for recusal. Judge Davis' connection to the law firm representing some of the defendants in the case is minimal: he worked in the firm as an associate for less than a year in 1987.2 Heimbecker has not alleged that Judge Davis has any continuing interest or participation

2 The attorney handling this litigation on behalf of the law firm is married to a woman who served as a law clerk to Judge Davis from 1987 to 1992, when he served on the Philadelphia Court of Common Pleas. Although addressed by Judge Davis in his order denying the motion to recuse, this connection has not been raised by Heimbecker. Nevertheless, the marriage of Judge Davis' former law clerk to an attorney representing one of the defendants does not raise doubt as to the judge's impartiality.

in the firm. Indeed, in denying the motion for recusal, Judge Davis submitted that he has had "no connection, formal or informal, with the firm" since his brief time there fifteen years ago. See Martin v. Monumental Life Ins. Co., 240 F.3d 223,236 (3d Cir. 2001) (no question of impartiality where judge's relationship with a party's law firm had terminated and there was no lingering relationship); see also Bumpus v. Uniroval Tire Co. Division of Uniroyal, Inc., 385 P.Supp, 711,714 (E.D.Pa.1974) ("The mere fact that a Judge was more than a decade ago a law partner of an attorney who later appears before him is patently insufficient to require disqualification."). Accordingly, Judge Davis' former professional association with a law firm representing one of the defendants in the case does not raise doubts as to his impartiality.

In addition, the fact that over twenty years ago Judge Davis was twice appointed to work in the Philadelphia District Attorney's Office by then-District Attorney Rendell, who is now a partner in that law firm, is not a basis for recusal.3 Indeed, "[a]ll judges come to the bench with a background of experiences, associations and viewpoints. This background alone is seldom sufficient in itself to provide a reasonable basis for recusal." Brody v. President & Fellows of Harvard College, 664 F.2d 10, 11 (1st Cir. 1981), Here, the connection between Judge Davis' prior professional association with Mr. Rendell and

3 As further support for the alleged "long term, continuous and frequent contact" between Judge Davis and Mr. Rendell, Heimbecker also notes that in 1992 Mr. Rendell appointed Judge Davis as Chairperson of the Task Force on Alternatives to Incarceration. Heimbecker also mentions that Judge Davis was employed for one year by the University of Pennsylvania, where Mr. Rendell attended college and now teaches government and politics courses.

the case before him is extremely tenuous. As such, a reasonable observer who is informed of all the surrounding facts and circumstances would not question the Judge's impartiality.

Finally, no appearance of impartiality is created by Heimbecker's allegation that a witness in the case, who is also chairman of a law firm named as a defendant, served on the Federal Judicial Nominating Commission of Pennsylvania, an organization which recommended Judge Davis. This remote connection is indicative of the type of inevitable tangential relationship which fails to demonstrate the appearance of judicial bias. See Home Placement Service.inc. v. Providence JournalCo.. 739 P.2d 671 (1st Cir. 1984) (judge's relationship with Senator who was responsible for his appointment did not necessitate disqualification in case involving Senator's former law firm and Senator's cousin); see also Warner v. Global Natural Resources. 545 P.Supp, 1298 (S.D.Ohio 1982) (judge not disqualified where plaintiff was an acquaintance who had supported his nomination to federal bench). It is unclear whether the witness personally knows Judge Davis, whether he served on the Commission while Judge Davis was being considered, or whether he made any decision, favorably or unfavorably, concerning Judge Davis' recommendation. Consequently, this coincidental connection is not sufficient to cause a reasonable person to harbor doubts concerning Judge Davis' impartiality.

Under the circumstances described above, we believe that a reasonable person would not view Judge Davis' alleged connections with the defendants as evidencing or creating an appearance of impartiality. Accordingly, we will deny the petition for a writ of mandamus.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-3046

IN RE: GERARD HEIMBECKER,

Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the
Eastern District of Pennsylvania
(Related to EJD.Pa. Civ. No. Ol-cv-06140)

District Judge: Honorable Legrome D. Davis

Submitted Under Rule 21, Fed.R.App.P.
August 29,2002

Before: NYGAARD, ROTH and BARRY, Circuit Judges

JUDGMENT

This cause came on to be heard on a petition for writ of mandamus. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court That the petition for writ of mandamus be, and the same is, denied.

All of the above in accordance with the Opinion of the Court.

ATTEST:
/s/
Acting Clerk
DATED: November 29,2002

FILED JUL 22 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. GERARD HEIMBECKER CIVIL ACTION

V.

555 ASSOCIATES, et al 01-cv-6140

ORDER

AND NOW. this 22nd day of July, 2002, Plaintiffs Motion for Reconsideration of this court's July 3, 2002 Order denying Plaintiffs Motion for Recusal is hereby DENIED.

BY THE COURT
/s/
Legrome Davis, U S D J

Copies by fax to:
G. Kahn, Esq.
G. Arth, Esq.
Copies by mail to:
J. Quinn, Esq.
H. Clinton, Esq.
A. Carver, Esq.
S. Pace, Jr., Esq
D. Lyons, Esq,
H. Heimbecker

ENTERED
July 23 2002
CLERK OF COURT

7/22/02-JW

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. GERARD HEIMBECKER	:	CIVIL ACTION
v.	:	
555 ASSOCIATES, et al.	:	01 -cv-6140

ORDER

AND NOW, this 3rd day of July, 2002, Plaintiffs Motion for Recusal is hereby DENIED for the following reasons: (1) The standard for recusal set forth in 28 U.S.C. §455(a) is "where a reasonable man knowing all the circumstances would harbor doubts concerning the judge's impartiality." Further, "where the basis for recusal is not direct, but is remote, contingent, or speculative," recusal is not warranted". In re Drexel Burnham Lambert, Inc. 861 F. 2d 1307, 1313 (2ndCir. 1988). This court does not have a persona! or professional bias for or against Mr. Kahn or the Bollard Spahr Andrews and Ingersoll firm, or for or against any of the parties in this matter. As the previous contact between tins court and the Ballard Spahr law firm, and this court and Mr. Kahn. are extremely attenuated, this standard has not been met. (2) This court's association with the firm of Ballard Spahr Andrews and Ingersoll occurred fifteen years ago, and lasted for less than one year. Since that period of employment as an associate, this court has had no connection, formal or informal, with the firm of Ballard, Spahr, Andrews and Ingersoll. Absent specific allegations of prejudice, which plaintiff cannot make, recusal from this matter is not necessary. See Bumpus ,v., Uniroyal Tire Co. Division of Uniroyal, Inc., 385 F. Supp. 711, 714 (E,D. Pa. 1974), Martin v. Monumental Life Insurance Co.. 240 P. 3d

223,237(3"^. 2001). (2) Geoffrey Kahn, Esquire, is handling this litigation for Ballard Spahr Andrews and Ingersoll, which represents defendant CNA Insurance Company. The fact that Mr. Kahn's spouse, Susan Kahn, Esquire, served as my law clerk in the Philadelphia Court of Common Pleas from 1987 to 1992, does not provide sufficient reason for recusal- This court hired Ms. Kahn on the basis of its familiarity with her work product, which was completely independent of her husband. Again, given the amount of time that has passed since Ms, Kahn's employment and the totally unrelated nature of that employment to the current case, recusal is neither necessary nor appropriate. See U.S.v.DeTemple 162 F. 3d 279,286 n.2 (4th Cir 1998), Schwartz v. Hospital of University of Pennsylvania, Civ. A. No. 88-4865, 1992 WL 102864,3 (B.D. Pa., May 4,1992)(cites to Rubin and Bartell, Law Clerk Handbook, regarding termination of law clerk-judge relationship, and to Pennsylvania Rule of Professional Conduct 1.12, which states that a lawyer who served as a law clerk is only prohibited from representing anyone in connection with a matter in which he participated personally and substantially as a law clerk).

For the reasons set forth in this order, Plaintiffs Motion for Recusal is hereby DENIED.

BY THE COURT:

/s/

Legrome Davis, U.S.D J.

UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

N0.03-1600

IN RE: H. GERARD HEIMBECKER,

Petitioner

On Petition for a Writ of Mandamus from the
United States District Court for the
Eastern District of Pennsylvania
(Related to D.C. Civ. No. Ol-cv-6140)
District Judge: Honorable Legrome D. Davis

Submitted Under Rule 21, Fed. R. App.P.

March 27,2003

Before: SCIRICA, BARRY and AMBRO, Circuit Judges

(Filed April 2,2003)

OPINION

PER CURIAM

In July 2001, H. Gerard Heimbecker instituted an action in the Court of Common Pleas of Delaware County alleging breach of contract, breach of the duty of good faith and fair dealing, and violations of the Racketeer Influenced and Corrupt Organizations

Act, 18 U.S.C. § 1961 et seq. In December 2001, the action was removed to the United States District Court for the Eastern District of Pennsylvania, where, after the defendants filed motions to dismiss, it was reassigned to District Court Judge Legrome D. Davis, Heimbecker immediately filed a motion to recuse Judge Davis from the case pursuant to 28 U.S.C. § 455(a). The motion was denied, as was Heimbecker's subsequently filed motion for reconsideration. Thereafter, Heimbecker filed a petition for writ of mandamus in this Court seeking to compel Judge Davis to disqualify himself from presiding over Heimbecker's civil action. On November 29, 2002, we denied Heimbecker's petition for writ of mandamus, concluding that Judge Davis' alleged connections with the defendants did not create an appearance of impartiality. See C.A. No. 02-3046. Heimbecker's request for panel rehearing was likewise denied,

After we denied Heimbecker''s petition for writ of mandamus, the action proceeded in the District Court. Heimbecker then filed a motion in the District Court seeking to recuse Judge Davis pursuant to 28 U.S.C. § 144, On February 5,2003, the District Court directed the parties to appear before the Court for oral argument to address Heimbecker's recusal motion, as well as the defendants' motions to dismiss, and Heimbecker's responses thereto. The District Court subsequently entered notice that oral arguments on the pending motions were scheduled for March 5,2003. Shortly thereafter, Heimbecker filed a motion to stay the District Court's February 5,2003 order, as well as the District Court's notice scheduling oral arguments. In the stay motion, Heimbecker argued that the

District Court erroneously scheduled oral argument on his recusal motion simultaneously with oral argument on the defendants' motions to dismiss. According to Heimbecker, the District Court should have limited oral argument to his § 144 recusal motion and "settlement discussions" On February 28,2003, the District Court denied Heimbecker's stay motion.

On March 4,2003, Heimbecker filed a petition for writ of mandamus in this Court. In his petition, Heimbecker seeks an order directing Judge Davis to vacate the February 28, 2003 order denying his motion to stay and to "provide [Heimbecker] with the docket numbers and dates of his court appearances in the trials in state and federal courts where he appeared as the lead counsel for Ballard Spahr Andrews and Ingersoll on behalf of the Raymark Corporation, the central issue in Petitioner's Motion for Recusal Pursuant to 28 U.S.C. § 144."

Mandamus is an appropriate remedy only in the most extraordinary of situations. See Sporckv.PeiL 759 F.2d 312,314 (3d Cir. 1985). To prevail, a petitioner must show that he has (i) no other adequate means to obtain the relief he seeks, and (ii) a "clear and indisputable" right to the issuance of the writ. See Haines v. Liggett Group, Inc.. 975 F.2d 81» 89 (3d Cir. 1992). Issuance of the writ is a matter of discretion. See Kerr v. United States District Court 426 U.S. 394,403 (1976). Moreover, a writ is not a substitute for an appeal; only if a direct appeal is unavailable will this Court determine whether a writ of mandamus will issue. See In re Ford Motor Co.. 110 F.3d 954,957 (3d Cir. 1997).

First with respect to Heimbecker's request that we direct the District Court to vacate its February 28 order, he has failed to show that he has no other adequate means to obtain relief. See Haines,. 975 F.2d at 89. There are currently a number of motions pending before the District Court, including Heimbecker's recusal motion and defendants' motions to dismiss. As such, Heimbecker clearly has the alternate remedy of appealing any adverse decision rendered by the District Court.

Heimbecker has also failed to show a "clear and indisputable" right to the issuance of a writ directing the District Court to vacate its February 28 order. Haines, 975 F.2d at 89. In his petition, Heimbecker argues that oral arguments on the motions to dismiss "were not necessary or appropriate at that juncture." However, the manner in which a court disposes of cases on its docket is within its discretion, and an appellate court will not interfere with that discretion except upon the clearest showing that the District Court's decision substantially prejudiced the litigant. See In re Fine Paper Antitrust Litigation. 685 F.2d 810, 817 (3d Cir. 1982). Heimbecker has failed to make such a showing.

Heimbecker further argues that the District Court should not have scheduled oral arguments for both his recusal motion and the defendants' motions to dismiss on the same day because: (1) if the District Court granted his recusal motion, it would lack jurisdiction to hear oral arguments on the motions to dismiss; and (2) if the District Court denied his

recusal motion, Heimbecker would have a "legal, procedural and Constitutional right to file a Writ of Mandamus" from the denial of his § 144 motion. Judge Davis adequately addressed Heimbecker's first contention in the February 28 order by stating that if Heimbecker's affidavit in support of§ 144 recusal was found to be sufficient. Judge Davis would proceed no further and the matter would be reassigned- As to Heimbecker^s second contention, notwithstanding his arguments to the contrary, "we have previously determined that mandamus is not a proper method for us to review a challenge under" 28 U,S.C. § 144, In re Antar. 71 F.3d 97,101 (3d Cir. 1995): see also In re School Asbestos Litigation. 977 F.2d 764, 774-76 (3d Cir. 1992); City of Pittsburgh v. Simmons. 729 F.2d 953 (3d Cir. 1984); Green v. Murphy. 259 F.2d 591 (3d Cir, 1958) (en banc). Thus, Heimbecker's argument is without merit as the use of mandamus to correct any failure on the part of Judge Davis to recuse himself is precluded, and an appeal from the final judgment will provide an adequate means of relief to challenge the issue of recusal under §144.

Finally, to the extent that Heimbecker asks that we direct Judge Davis to provide him with "the docket numbers and dates of his court appearances in the trials in state and federal courts where he appeared as the lead counsel for Ballard Spahr Andrews and Ingersoll on behalf of the Raymark Corporation," the information Heimbecker is seeking is a matter of public record. Because Heimbecker clearly has other adequate means to obtain this information, that is, by searching court records, mandamus is not an appropriate remedy.

Accordingly, Heimbecker's petition for a writ of mandamus will be denied.

TO THE CLERK:

Please file the foregoing opinion.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEIMBECKER CIVIL ACTION

v. **FILED MAY 23 2002**

555 ASSOCIATES NO. 01-6140

ORDER

AND NOW, this 23rd day of May, 2002, in accordance with the court's procedure for random reassignment of cases, it is hereby

ORDERED that the above-captioned case is reassigned from the calendar of the Honorable Stewart Dalzell to the calendar of the Honorable Legrome D. Davis.

FOR THE COURT:

JAMES T. GILES
Chief Judge

ATTEST:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GERARD HEIMBECKER,

V.

555 ASSOCIATES, et al,

01-CV-6140
Philadelphia, PA
March 5, 2003

55 ASSOCIATES, et al,
Defendants.

FILED Mar 07 2003

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LEGROME D. DAVIS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Defendants:

G ERALD ARTH, ESQ.
DANIEL LYONS, ESQ.
FOX, ROTHSCHILD, O'BRIEN & FRANKEL LLP
2000 Market Street
Philadelphia, PA 19103
GEOFFREY KAHN, ESQ.
AMY CARVER, ESQ.
BALLARD, SPAHR, ANDREWS & INGERSOLL
1735 Market Street, 51st Floor
Philadelphia, PA 19103
HENRY M. CLINTON, ESQ
LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY
510 Walnut Street Philadelphia, PA 19106
SAMUEL PACE, JR., ESQ.
SUSAN DANIELSKI, ESQ.
DUGAN, BRINKMANN, MAGINNIS & PACE
1880 JFK Boulevard Philadelphia, PA 19103

Audio Operator: MARCELLA EL-SHABAZZ

certified mail. Shortly after it was mailed, one of the defense counsel contacted chambers and stated they were going to be out of the country. So then Mrs. El-Shabazz, who is present in front of us, contacted all the parties to try to arrange a different date. She spoke directly toMr. Heimbecker who stated to her he just returned from the post office picking up notice of the 24th hearing. Mrs. El-Shabazz advised him that we wanted to make this happen, this hearing happen, on March 5th. He explicitly told her that that was a good date. He said that he would be here and advised Mrs. El-Shabazz that he looked forward to meeting her.

Mrs. El-Shabazz, was there anything else about that communication that I left out?

Mrs. EL-SHABAZZ: No, Judge.

THE COURT: Is your communication correct to the best of your memory?

MRS. EL-SHABAZZ: Yes, it is.

THE COURT: I would also note that in the defendants' most recent mandamus to the Third Circuit, he indicates on page 20-- I think it's page 5, but he specifically notes the date and time of this hearing. His purpose, of course, was to prevent this hearing from occurring. I should also advice you that my staff has communicated with the Third Circuit and we're here today with the understanding and the agreement of the Third Circuit. So, basically, the plaintiff has failed to appear.

THE COURT: So permission to join in Ballard's motion will be granted.
MR. CLINTON: Thank you, Your Honor.
THE COURT: So it is now 9:59. Mr. Heimbecker is not present yet And, so the record of this proceeding is closed unless there is anything else that counsel needs to add. What we will do is get to you by way of a written memo/order as soon as possible. All right? We appreciate your courtesies and take care.
COUNSEL: Thank you. Your Honor.

*****

CERTIFICATION

I, Diana Doman, the assigned transcriber, do hereby certify the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ 3/7/03
DIANA DOMAN DATE

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
1-215-605-0368

October 12,2002

The Honorable Legrome D. Davis
United States District Judge
U.S. Courthouse 601 Market Street, Room 5918
Philadelphia, PA 19106-1797

RE: H. Gerard Heimbecker v. 555 Associates, et al
No.01-CV-6140rE.D.Pa.)
Writ of Mandamus
3rd Circuit Court of Appeals
No. 02-3046

Dear Judge Davis:

In anticipation of a potential further filing in the captioned matter, I am in the process of investigating the characterization, in your order of July 3rd, 2002, that your previous contact with the Ballard Spahr law firm was "extremely attenuated". Said Order denied my motion for your recusal. To date, my investigation has revealed the following additional information:

On April 16,1987, the Philadelphia Daily News reported that the Ballard Spahr Law firm contributed $5,000.00 to the Committee to Support the Governor's Judicial Appointments. The three candidates were Legrome D. Davis, John W. Herron and C. Damell Jones.

On May 17,1987, the Philadelphia Inquirer reported Committee Chairman Henry T. Reath, explained the money was spent to defray mailing and handling costs for sample ballots containing the names of Davis, Herron and Jones being distributed by Mayor Goode and Democrat challenger Edward G. Rendell. Reath further stated, although the names of contributors are a matter of public record, the three candidates will not officially be notified of their identities so they -will not feel beholden to lawyers in the firms.

On July 13, 1987, the Philadelphia Inquirer published an interview with you. In that interview, you related your financial distress, your part-time work with the University of Pennsylvania and your 'scramble" to obtain part-time work that would not present ^conflicts in the event you were elected to the bench'\ Contemporaneously, you were employed with the Ballard Spahr Firm.

While all your official resumes, reflect your June 1987 employment at the University of Pennsylvania, several, including the United States Department of Justice, Office of Legal Policy, fail to list your July 1987 to November 1987 employment at the Ballard Spahr law firm.

Apparently, Senator Specter thought those two periods of employment were very significant. From the Congressional Record, in his remarks to the Senate on April 18, 2002, in describing your qualifications, he stated : "Previously (Legrome Davis] worked for Ballard, Spahr, Ingersoll and Andrews, and the Office of the General Counsel for the University of Pennsylvania. He was also an Assistant District Attorney for nine years....." (emphasis added)

Finally, in the sworn questionnaire you submitted to the Committee On The Judiciary of the Unites States Senate, regarding your employment at Ballard Spahr, you testified to the following:

July 1987-November 1987: attorney, Ballard, Spahr, Andrews and Ingersoll. During this period I represented the interests of Ray mark Corporation, a manufacturer of asbestos cloth, in depositions and trials in state and federal courts. 18 (b)(l)...

Raymark Corporation, a manufacturer of asbestos blankets, was my sole client during my tenure at Ballard, Spahr, Andrews and Ingersoll. 18(b)(2)...

I occasionally appeared in court while employed at Ballard, Spahr, Andrews and Ingersoll. 18 (c)(l)...

I served as lead counsel in all matters in which I appeared in court. 18(c)(4) (emphasis added)

Unfortunately, I have been unable to verify your testimony regarding your court appearances described above. Therefore, I respectfully request the court provide me with the docket numbers and dates of your court appearances of the trials in state and federal courts where you appeared as lead counsel on behalf of the Raymark Corporation. This information, which should be readily available to you, will permit me to conclude my investigation into your "extremely attenuated" contact with the Ballard Spahr Firm.

My apologies for any inconvenience this may cause the Court.

Respectfully,

/s/

H. Gerard Heimbecker

Plaintiff

cc: (via First Class Mail)

Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll

Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel

Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace

Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray

Joseph T.F.Quinn, Esq. District Justice 32-1-33

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
1-215-605-0368

November 16, 2002

The Honorable Legrome D. Davis
United States District Judge
U.S. Courthouse
601 Market Street, Room 5918
Philadelphia, PA 19106-1797

RE: H. Gerard Heimbecker v. 555 Associates et al
No. 01-CV-614Q (E.D.Pa.)
Writ of Mandamus
3rd Circuit Court of Appeals
No. 02-3046

Dear Judge Davis:

In your order denying my Motion for Recusal, your honor raised the issue of your "extremely attenuated" contact with the law firm of Ballard Spahr Andrews and Ingersoll.

In determining whether your assertion was correct, I discovered additional information revealing what I believe to be an "extremely puissant" relationship between this court and Ballard Spahr which required the filing of a Motion for Reconsideration and the subsequent Writ of Mandamus.

In my previous correspondence, dated and mailed October 12,2002 and delivered to your chambers on October 15,2002,1 reiterated your answers in the sworn questionnaire you submitted to the Committee On The Judiciary of the United States Senate, regarding your employment at Ballard Spahr as follows:

Describe the general character of your law practice and indicate by date if and when its character has changed over the years. 18 (b) (1)

July 1987-November 1987: attorney, Ballard, Spahr, Andrews and Ingersoll. During this period ***I represented the interests of Ray mark Corporation, a manufacturer of asbestos cloth, in depositions and trials in state and federal courts.***

Describe your typical former clients, and mention the areas, if any in which you have specialized. 18 (b((2)

Raymark Corporation, a manufacturer of asbestos blankets, was my sole client during my tenure at Bollard, Spahr, Andrews and Ingersoll.

Describe whether you appeared in court frequently, occasionally or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates. 18(c)(l)

I ***occasionally appeared in court*** *while employed at Ballard, Spahr, Andrews and Ingersoll.*

State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel or associate counsel. 18(c) (4)

I served as ***lead counsel*** *in all matters in which I* ***appeared*** *in court. I was counsel of record in several thousand bench trials and approximately seventy jury trials. (Emphasis added).*

In my letter of October 12,2002, I advised the court I was unable to verify your testimony regarding your court appearances described above and I respectfully requested the court provide me with the docket numbers and dates of your court appearances in the trials in state and federal courts where you appeared as the lead counsel for Ballard Spahr on behalf of the Raymark Corporation.

The failure of this court to provide the requested information, which should be readily available, is impeding my ability to file a supplement to the Writ of Mandamus pending before the Third Circuit Court of Appeals.

With all due respect, please provide the docket numbers and dates of your court appearances in the trials in state and federal courts where you appeared as the lead counsel for Ballard Spahr on behalf of the Raymark Corporation referred to in your sworn questionnaire you submitted to the Committee On The Judiciary of the United States Senate.

Respectfully,

/s/

H. Gerard Heimbecker

Plaintiff

cc: (via First Class Mail)

Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll

Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel

Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace

Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray

Joseph T.F.Quinn, Esq. District Justice 32-1-33

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
UNITED STATES DISTRICT JUDGE
5918 UNITED STATES COURTHOUSE
INDEPENDENCE MALL
PHILADELPHIA, PENNSYLVANIA 19106-1743

CHAMBERS OF LEGROME D. DAVIS
UNITED STATES DISTRICT JUDGE

November 18, 2002

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082

RE: H. Gerard Heimbecker v. 555 Associates, et al., 01-6140

Dear Mr. Heimbecker:

1 am in receipt of your letter addressed to Judge Legrome D. Davis dated November 16 2002, requesting that Judge Davis personally provide certain information to you. As you are aware, you filed a Writ of Mandamus with the Court of Appeals for the Third Circuit challenging this Court s denial of your Motion for Recusal, and that matter is currently pending before the Court of Appeals (No. 02-3046). Under these circumstances, your attempts to communicate directly with Judge Davis should be discontinued.

Very truly yours,

/s/
Judson H.P. Dean
Law Clerk to Judge Davis

cc: Gerald E. Arth, Esq., Fox, Rothschild, O'Brien & Frankel
Samuel J. Pace, Jr, Esq., Dugan, Brinkmann, Maginnis & Pace
Geoffrey A. Kahn, Esq., Ballard, Spahr, Andrews & Ingersoll
Henry M. Clinton, Esq., Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray Joseph T.F. Quinn, Esq.

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
1-215-605-0368

November 27, 2002

The Honorable Edward R. Becker, Chief Judge
United States Court of Appeals for the Third Circuit
19613 U.S. Courthouse
601 Market Street Philadelphia, PA 19106

RE: H. Gerard Heimbecker v. 555 Associates, et al
No.01-CV-6140rE.D.Pa.
Writ of Mandamus
3rd Circuit Court of Appeals
No. 02-3046

Dear Judge Becker:

This letter is written in accordance with Judicial Misconduct Rule 19 (A) and it's legislative Commentary. I respectfully bring to the attention of the Chief Judge the following information which suggests that Judge Legrome D. Davis has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.

Judge Davis's Order, denying my Motion to recuse himself, is the subject of the above captioned Writ of Mandamus presently pending in the 3rd Circuit Court of Appeals. In that Order, Judge Davis raised the issue of his "extremely attenuated" contact with the law firm of Ballard, Spahr, Andrews and Ingersoll. Subsequent to my filing of the Writ of Mandamus, I discovered additional information which contradicted Judge Davis' representation of his stated contact with the Ballard Spahr firm. That information included Judge Davis' sworn testimony submitted to the Judiciary Committee of the United States Senate during his confirmation process and is reiterated in my letters to Judge Davis of October 12, 2002 and November 16, 2002.

In both my letters of October 12,2002 and November 16,2002, I advised Judge Davis of my intention to file a supplement to the aforesaid Writ of Mandamus detailing the additional information I had discovered. I respectfully requested he provide me with the docket numbers and dates of his court appearances in the trials in state and federal courts where he appeared as the lead counsel for Ballard Spahr, on behalf of the Raymark Corporation, referred to in his sworn questionnaire he submitted to the Committee On The Judiciary of the United States Senate.

This request to Judge Davis was preceded by my diligent and comprehensive search which failed to confirm his testimony to the Senate.

On November 23, I received a letter from J. Davis' Chambers dated November 18, 2002 and postmarked November 22, 2002, advising that my attempts to communicate with Judge Davis should be discontinued, which prompted this letter to you.

With all due respect. Judge Davis' failure to provide the requested information, which should be readily available, is impeding my ability to file a supplement to the Writ of Mandamus pending before the 3rd Circuit Court of Appeals.

It would appear to any reasonable person, upon Judge Davis' failure to provide the requested information, said information does not exist and there is a strong possibility Judge Davis fabricated portions of his resume submitted to the Senate regarding his employment at Ballard Spahr. I believe any such fabrication, by a candidate for the Federal Bench, is an impeachable offense and if this appearance proves to be true Judge Davis' assertion of an "extremely attenuated " contact with the Ballard Spahr firm in his Order, denying my motion for his recusal, is an outrage.

Your attention to this matter will be appreciated.

Respectfully,

/s/

H. Gerard Heimbecker

Plaintiff

Encl:

Letter to J. Davis 10/12/02

Letter to J. Davis 11/16/02

Letter from J. Davis 11/18/02

cc: (via First Class Mail) w/o encl.

Honorable Legrome D. Davis

Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll

Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel

Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace

Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray

Joseph T.F.Quinn, Esq. District Justice 32-1-33

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
1-215-605-0368

December 2, 2002

The Honorable Edward R. Becker, Chief Judge
United States Court of Appeals for the Third Circuit
19613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

RE: H. Gerard Heimbecker v. 555 Associates, et al
No.01-CV-6140(E.D.Pa.)
Writ of Mandamus
3rd Circuit Court of Appeals
No. 02-3046

Dear Judge Becker:

This letter is written pursuant to Judicial Misconduct Rule 19 (A) and it's legislative Commentary. I respectfully bring to the attention of the Chief Judge the following information which suggests that Judge Legrome D. Davis has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.

Judge Davis's Order, denying my Motion to recuse himself, is the subject of the above captioned Writ of Mandamus presently pending in the 3rd Circuit Court of Appeals. In that Order, Judge Davis raised the issue of his "extremely attenuated" contact with the law firm of Ballard, Spahr, Andrews and Ingersoll. Subsequent to my filing of the Writ of Mandamus, I discovered additional information which contradicted Judge Davis' representation of his stated contact with the Ballard Spahr firm. That information included Judge Davis' sworn testimony submitted to the Judiciary Committee of the United States Senate during his confirmation process and is reiterated in my letters to Judge Davis of October 12, 2002 and November 16, 2002.

In my letters of October 12, 2002 and November 16,

2002,1 advised Judge Davis of my intention to file a supplement to the aforesaid Writ of Mandamus detailing the additional information I had discovered. I respectfully requested he provide me with the docket numbers and dates of his court appearances in the trials in state and federal courts where he appeared as the lead counsel for Ballard Spahr, on behalf of the Raymark Corporation, referred to in his sworn questionnaire he submitted to the Committee On The Judiciary of the United States Senate.

This request to Judge Davis was preceded by my diligent and comprehensive search which failed to confirm his testimony to the Senate.

On November 23, I received a letter from J. Davis' Chambers dated November 18, 2002 and postmarked November 22, 2002, advising that my attempts to communicate with Judge Davis should be discontinued.

With all due respect, Judge Davis' failure to provide the requested information, which should be readily available, prevented my concluding an investigation prior to filing a supplement to the Writ of Mandamus pending before the 3rd Circuit Court of Appeals.

It would appear to any reasonable person, upon Judge Davis' failure to provide the requested information, said information does not exist and there is a strong possibility Judge Davis fabricated portions of his resume submitted to the Senate regarding his employment at Ballard Spahr. I believe any such fabrication, by a candidate for the Federal Bench, is not only an impeachable offense but also a violation of Federal law. If this appearance proves to be true Judge Davis' assertion of an "extremely attenuated " contact with the Ballard Spahr firm in his Order, denying my motion for his recusal, is an outrage.

On November 29, 2002, a panel of your Court, consisting of Judges Nygaard, Roth and Barry, entered judgment denying the petition for Writ of Mandamus. The

Opinion states in part, "[accordingly. Judge Davis' former professional association with a law firm representing one of the defendants in the case does not raise doubts as to his impartiality".

With all due respect, as a citizen of the United States of America and a pro se litigant, I have the right to know whether or not the Judge, who is adjudicating my case, fabricated his resume with the law firm in question while a candidate for the Federal Bench.

As it is my intention to file a Petition for Panel Rehearing, your attention to this matter will be appreciated.

Respectfully,
/s/
H. Gerard Heimbecker
Plaintiff

Encl:
Letter to J. Davis 10/12/02
Letter to J. Davis 11/16/02
Letter from J. Davis 11/18/02
cc: (via First Class Mail) w/encl.
Honorable Richard L. Nygaard
Honorable Jane R. Roth
Honorable Maryanne Trump Barry
cc: (via First Class Mail) w/o encl.
Honorable Legrome D. Davis
Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll
Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel
Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace
Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray
Joseph T.F.Quinn, Esq. District Justice 32-1-33

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
1-215-605-0368

December7, 2002

The Honorable Edward R. Becker, Chief Judge
United States Court of Appeals for the Third Circuit
19613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

RE: H. Gerard Heimbecker v. 555 Associates, et al
No. Ol-CV-6140 (E.D.Pa.)
Writ of Mandamus
3rd Circuit Court of Appeals
No. 02-3046

Dear Judge Becker:

As I apprized you in my letter dated December 2, 2002,1 intend to file a Petition for Panel Rehearing. Consequently, it is essential I receive a timely answer to the question presented which was whether or not Judge Davis fabricated his resume with the law firm of Ballard Spahr while a candidate for the federal bench.

As I plan to file the Petition for Panel Rehearing on Wednesday, December 11, 2002, it is imperative I receive a prompt response as to whether Judge Davis fabricated his resume or I be provided with the docket numbers and dates of his court appearances in the trials in state and federal courts where he appeared as the lead counsel for Ballard Spahr, on behalf of the Raymark Corporation, referred to in his sworn questionnaire he submitted to the Committee On The Judiciary of the United States Senate.

The failure to furnish the above information will substantially impede my ability to provide the panel with an accurate portrayal of Judge Davis' former professional association with Ballard Spahr, which when revealed, would raise serious doubts as to his impartiality.

Permit me to repeat myself, as a citizen of the United States of America and a litigant, I have the right to know whether or not the Judge, who is adjudicating my case, fabricated his resume with the law firm in question while a candidate for the federal bench.

Respectfully,

/s/

H. Gerard Heimbecker

Plaintiff

cc: (via First Class Mail)

Honorable Richard L. Nygaard

Honorable Jane R. Roth

Honorable Maryanne Trump Barry

Honorable Legrome D. Davis

Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll

Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel

Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace

Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray

Joseph T.F.Quinn, Esq. District Justice 32-1-33

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106.1790

MARCIA M.WALDRON
CLERK

TELEPHONE
215-597-2995

December 12,2002

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082

Dear Mr. Heimbecker:

Your letters of December 2,2002 and December 7,2002 to the Chief Judge of the Circuit have been referred to this office for response. Since Rules 1 through 4 of the Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability provide for a specific procedure to bring complaints of Judicial misconduct or disability before the Judicial Council, the Chief Judge declines to consider your submissions under the authority of the more general Rule 19(A).

Any complaint of misconduct by a federal judicial officer within the Circuit is to be submitted on the enclosed complaint form. Pursuant to Rule 2(B) of the Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability a statement shcuild be attached to the complaint form setting forth, with particularity, the facts that the claim of misconduct or disability is based upon. That statement may not be longer than 5 pages, I.e. 5 sides, on paper which Is not larger than the paper on which the complaint form appears. Normally, the statement of facts will include: (1) a statement of what occurred; (2) the time and place of the occurrence or occurrences; and, (3) any other

information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witnesses and their names and addresses.

Pursuant to Rule 2(D) of the Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability you may refer to supporting documents in your statement of facts, however, the documents are to be submitted only if requested by the Chief Judge. In the absence of such a request, supporting documents will not be accepted for filing. Should such a request for supporting documents be made, you will be responsible for producing the copies of the documents necessary for submission.

When completed an original and two copies of the complaint and statement of facts should be forwarded to the Clerk of this Court at the address shown above on the letterhead. The envelope should be marked "Complaint of Misconduct" but should not name the judge.

Please note that the judicial misconduct complaint procedure is not intended to provide a means of obtaining review of a judge's decision or ruling in a case and does not provide a substitute for the normal appellate process. The Judicial Council lacks authority to reverse or otherwise alter, correct or change a judge's ruling or decision in a case. In this regard your attention is specifically directed to Rule 1. Rules of the Judicial Council of the Third Circuit Governing Complaints of Judicial Misconduct and Disability which provides in relevant part:

(B) What may be complained about. The law authorizes complaints about United States circuit Judges, district judges, bankruptcy judges, or magistrate judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability." The conduct to which the law is addressed does not include making

wrong decisions ~ even very wrong decisions -- in cases. The law provides that a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling." "Mental or physical disability" may include temporary conditions as well as permanent disability.

* * *

(E) Limitations on use of the judicial misconduct procedures. The complaint procedures are not intended to provide a means of reviewing a judge's decision or ruling in a case. The judicial council of the circuit, the body which takes action under the complaint procedure, does not have the power to change a decision or ruling. Only a court can do that. The complaint procedures may not ordinarily be used to:

1. Have a judge disqualified or recused from a case;
2. Transfer a pending case from one judge or court to another;
3. Compel a judge to make a ruling on a particular motion in a case;
4. Have money damages awarded;
5. Obtain release from custody.

Very truly yours.
Marcia M. Waldron, Clerk
By: /s/
Brad A. Baldus
Senior Legal Advisor to the Clerk

Enclosures

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
215-605-0368

December 30, 2002

The Honorable Edward R. Becker, Chief Judge
United States Court of Appeals for the Third Circuit
19613 U.S. Courthouse
601 Market Street Philadelphia, PA 19106

RE: H. Gerard Heimbecker v. 555 Associates, et al
No.01-CV-6140(E.D.Pa;)
Writ of Mandamus
3rd Circuit Court of Appeals
No. 02-3046
Petition for Panel Rehearing

Dear Judge Becker:

I am in receipt of the complaint forms, sent at your direction, to be completed in reference to my claims concerning Judge Legrome Davis.

This letter is written pursuant to Judicial Misconduct Rule 19.1 respectfully bring to the attention of the Chief Judge the Legislative Commentary as follows:

Rule 19 reflects the fact that the enactment of section 372(e) was not intended to displace the historic functions of the chief judge and the judicial circuit council to respond to problems that come to their attention. As stated by Senator DeConcini in his remarks upon final Senate passage of the 1980 act, "the informal, collegial resolution of the great majority of meritorious disability or disciplinary matters is to be the rule rather than the exception. Only in the rare case will it be deemed necessary to invoke the formal statutory procedures and sanctions provided for in the act."

As the Chief Judge, by invoking the formal statutory procedures and transmitting the complaint forms, you have determined this matter to be one of those rare cases.

Consequently, you should know by now whether or not Judge Davis materially misrepresented his resume regarding the specifics of his career at Ballard Spahr.

Since I must file the complaint forms under the penalty of perjury, I have a duty to determine whether Judge Davis, as lead counsel for Ballard Spahr, represented Raymark Corporation in depositions and trials in state and federal courts; information he submitted in his sworn questionnaire to the Committee On The Judiciary of the United States Senate.

As a result of Judge Davis' failure to provide the requested information, a reasonable person would suspect that Judge Davis materially misrepresented the specifics of his career at Ballard Spahr. However, Judge Davis has refused to communicate with me regarding this matter. Accordingly, would you please provide me with the requested information?

The courtesy of a reply will be appreciated.

Respectfully,

/s/

H. Gerard Heimbecker

Plaintiff

cc: First Class Mail
Honorable Richard L. Nygaard
Honorable Jane R. Roth
Honorable Maryanne Trump Barry
Honorable Legrome D. Davis
Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll
Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel
Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace
Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray
Joseph T.F.Quinn, Esq. District Justice 32-1-33

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
215-605-0368

January 2, 2003

Arthur Makadon, Esq. Chairman
Ballard, Spahr, Andrews & Ingersoll
1735 Market Street 51st Floor
Philadelphia, PA 19103-7599

RE: H. Gerard Heimbecker v. 555 Associates, et al
No.01-CV-6140(E.D.Pa/)
Writ of Mandamus
3rd Circuit Court of Appeals
No. 02-3046
Petition for Panel Rehearing

Dear Mr. Makadon:

I feel quite sure that you are familiar with the above captioned matter.

The Honorable Edward Becker, Chief Judge of the 3rd Circuit Court of Appeals, has invoked the formal statutory procedures concerning a complaint of Judicial Misconduct regarding Judge Legrome Davis and transmitted the complaint forms to me.

Since I must file the complaint forms under the penalty of perjury, I have a duty to determine whether Judge Davis, as lead counsel for Ballard Spahr, represented Raymark Corporation in depositions and trials in state and federal courts; information he submitted in his sworn questionnaire to the Committee On The Judiciary of the United States Senate.

As a result of Judge Davis' failure to provide the requested information, a reasonable person would suspect that Judge Davis materially misrepresented the specifics of his career at Ballard Spahr. However, Judge Davis has refused to communicate with me regarding this matter. My searches to verify Judge Davis's record have been unsuccessful.

The fact of the matter is the only Ballard Spahr attorney name representing the Raymark Corporation during Judge

Davis's career with your firm that I have been able to find is Arthur Makadon. Accordingly, if any person, other than Judge Davis, knows whether Judge Davis, as lead counsel for Ballard Spahr, represented Raymark Corporation in depositions and trials in state and federal courts; information he submitted in his sworn questionnaire to the Committee On The Judiciary of the United States Senate that person is you !

If he did, would you please provide me with the dates, times, and docket numbers of the depositions and trials in state and federal courts where Judge Davis appeared as lead counsel for your firm on behalf of the Raymark Corporation.?

If he didn't, you have a duty pursuant to the Rules of Professional Conduct 8.3 (a) and (b) to inform the appropriate authorities of Judge Davis's actions.

The courtesy of a reply will be appreciated.

Very truly yours,
/s/
H. Gerard Heimbecker
Plaintiff

cc: First Class Mail
Honorable Edward Becker, Chief Judge
Honorable Richard L. Nygaard
Honorable Jane R. Roth
Honorable Maryanne Trump Barry
Honorable Legrome D. Davis
Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll
Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel
Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace
Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray
Joseph T.F.Quinn, Esq. District Justice 32-1-33

LAW OFFICES
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 MARKET STREET. 51ST FLOOR
PHILADELPHIA, PENNSYLVANIA 19103-7599
2 15-665-8500
FAX: 215-864-8999
LAWYERS @ BALLARD SPAHR.COM
GEOFFREY A. KAHN
DIRECT DIAL: 215-864-8219
PERSONAL FAX : 215-864-9750
KAHN@BALLARDSPAHR.COM

January 6,2003

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082

Re: H. Gerard Heimbecker v. 555 Associates, et al.
Dear Mr. Heimbecker:

We have your letter of January 2 to Arthur Makadon. As you know, your petition for reheanng is pending in the Court of Appeals. We will await the outcome of the Courts ruling and in the meantime, do not believe any useful purpose will be served by an exchange of correspondence between the parties,

Thank you for your consideration.

Sincerely,
/s/
Geoffrey A. Kahn

GAK/sdh

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
215-605-0368

January 8, 2003

Arthur Makadon, Esq. Chairman
Ballard, Spahr, Andrews & Ingersoll
1735 Market Street 51st Floor
Philadelphia, PA 19103-7599

RE: Judicial Misconduct Complaint

Dear Mr. Makadon:

I am in receipt of your reply of January 6, 2003. It appears you misunderstood my request for information not related to my petition for panel rehearing pending in the Court of Appeals. Permit me to restate the issue.

The Honorable Edward Becker, Chief Judge of the 3rd Circuit Court of Appeals, has invoked the formal statutory procedures concerning a complaint of Judicial Misconduct regarding Judge Legrome Davis and transmitted the complaint forms to me. This complaint will survive any action taken by the Court of Appeals.

Since I must file the complaint forms under the penalty of perjury, I have a duty to determine whether Judge Davis, as lead counsel for Ballard Spahr, represented Raymark Corporation in depositions and trials in state and federal courts; information he submitted in his sworn questionnaire to the Committee On The Judiciary of the United States Senate.

As a result of Judge Davis' failure to provide the requested information, a reasonable person would suspect that Judge Davis materially misrepresented the specifics of his career at Ballard Spahr. However, Judge Davis has refused to communicate with me regarding this matter. My searches to verify Judge Davis's record have been unsuccessful.

The fact of the matter is the only Ballard Spahr attorney name representing the Raymark Corporation during Judge Davis's career with your firm I have been able to find is Arthur

Makadon. Accordingly, if any person, other than Judge Davis, knows whether Judge Davis, as lead counsel for Ballard Spahr, represented Raymark Corporation in depositions and trials in state and federal courts; information he submitted in his sworn questionnaire to the Committee On The Judiciary of the United States Senate; that person is you!

The circumstances can be simply stated as follows :

If he did, would you please provide me with the dates, times, and docket numbers of the depositions and trials in state and federal courts where Judge Davis appeared as lead counsel for your firm on behalf of the Raymark Corporation?

If he didn't, you were either aware of his material misrepresentations to the Senate Committee on the Judiciary regarding his career at your firm or you were not aware.

If you were aware of his material misrepresentations, you are complicit in criminal conduct as is every other attorney in your firm with such knowledge.

If you were not aware, you have a duty, as does every other attorney in your firm with such knowledge, pursuant to the Rules of Professional Conduct 8.3 (a) and (b) to inform the appropriate authorities of Judge Davis's actions.

Finally, permit me to quote Bill O'Reilly, who takes a keen interest in matters such as this, " Where am I wrong? " I'll give you the last word !

The courtesy of a reply will be appreciated.

Very truly yours,
H. Gerard Heimbecker
Plaintiff

Encl: Copy of Makadon Letter 01/06/03

cc: First Class Mail
Honorable Edward Becker, Chief Judge
Honorable Richard L. Nygaard
Honorable Jane R. Roth
Honorable Maryanne Trump Barry
Honorable Legrome D. Davis
Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel

Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace

Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray

Joseph T.F.Quinn, Esq. District Justice 32-1-33

H. GERARD HEIMBECKER
1 0 SOUTH L.YNN BOULEVARD
UPPER DARBY, PA 19082
215-605-0368

January 27, 2003

Arthur Makadon, Esq. Chairman
Ballard, Spahr, Andrews & Ingersoll
1735 Market Street 51s1 Floor
Philadelphia, PA 19103-7599

RE: Judicial Misconduct Complaint

Dear Mr. Makadon:

I am disappointed you haven't responded to my letter of January, 8, 2003. Your failure to do so presents me with a serious dilemma. I have no desire to make allegations against The Honorable Legrome D. Davis, District Judge of the Eastern District of Pennsylvania, which may not be accurate. However, my research leads me to conclude the information supplied by Judge Davis to the United States Senate Committee on the Judiciary is in fact, not true.

You, and I assume other members of your law firm, have the facts; information which can remove any doubt as to whether the answers Judge Davis provided on his questionnaire, are or are not true. If there is nothing to hide, why won't you remove the cloud which now hangs over the head of Judge Davis by answering the questions I have asked you?

I am perplexed. I realize Judge Davis may not have wanted to set the precedent of recusing himself in litigation involving your law firm, since he might feel like an ingrate, after how kind and generous your firm has been to him and your extraordinary efforts to help him get on the bench.

Is it possible that if you do not know what cases Judge Davis, as lead counsel for Ballard Spahr, represented Raymark Corporation in depositions and trials in state and federal courts, does some other member of your firm know the answer? Perhaps the individual who supplied the information for the F.B.I, background check knows. Perhaps there are some paralegals or secretaries, who worked for

Judge Davis, that may be able to answer these questions. I hope it will not be necessary to take depositions of your personnel.

As you are a leader of the Philadelphia Bar, I believe the Rules of Professional Conduct make it obligatory for you to come forward and inform the Honorable Edward R. Becker and the Senate Judiciary Committee of the facts requested of you and thereby clear the suspicion that clouds Judge Davis' appointment to the Federal Bench.

On the other hand, I have no desire to compel you to make any statement which would infringe on the exercise of your Fifth Amendment rights against self-incrimination, if in your judgment this would be applicable. I hope this is not the case.

If there is anyone in your firm who has the answers to the questions I have asked I hope he or she will be directed to provide them, especially the other 428 lawyers in your firm who are duty bound to do so. Finally, if for some reason you are unable or unwilling to supply the answers, I am certain someone from Raymark Corporation knows who represented them in depositions and trials in state and federal courts. While I am reluctant to write, if I don't hear from you, I will assume you have no objections.

Very truly yours,
H. Gerard Heimbecker
Plaintiff

cc: First Class Mail
Honorable Edward Becker, Chief Judge
Honorable Richard L. Nygaard
Honorable Jane R. Roth
Honorable Maryanne Trump Barry
Honorable Legrome D. Davis
Gerald Arth, Esq. Fox, Rothschild, O'Bricn & Frankcl
Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace
Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray

Joseph T.F.Quinn, Esq. District Justice 32-1-33
E-mail Ballard Spahr

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
1-215-605-0368

March 15,2003

Louis Fryman, Esq.
Chairman Fox, Rothschild, O'Brien and Frankel
2000 Market Street Tenth Floor
Philadelphia, PA 19103-3291

Re: Recusal of Judge Davis

Dear Mr. Fryman:

I feel certain that you are familiar with the above captioned matter.

On November 29, 2002, the 3rd Circuit Court of Appeals issued an Opinion relative to a denial of a Writ of Mandamus and stated, in part, the following:

> Finally, no appearance of impartiality is created by Heimbecker's allegation that a witness in the case, who is also chairman of a law firm named as a defendant, served on the Federal Judicial Nominating Commission of Pennsylvania, an organization which recommended Judge Davis. This remote connection is indicative of the type of inevitable tangential relationship which fails to demonstrate the appearance of judicial bias. . . It is unclear whether the witness personally knows Judge Davis, whether he served on the Commission while Judge Davis was being considered or whether he made any decision, favorably or unfavorably, concerning Judge Davis 'recommendation. Consequently, this coincidental connection is not sufficient to cause a reasonable person to harbor doubts concerning Judge Davis' impartiality. Third Circuit Opinion dated November 29, 2002 (emphasis added).

You are that unnamed witness and can answer the three questions raised by the court, namely: Do you know Judge Davis? Did you serve on the Commission while Judge Davis was being considered ? Did you make any decision, favorably or unfavorably, concerning Judge Davis' recommendation?

Additionally, upon review of your resume on your website, I noted, from 1962 to 1982, you were a partner in the firm of Becker, Becker & Fryman. The Chief Judge of the 3rd Circuit is the Honorable Edward R. Becker.

Is it possible you are the former law partner of the Chief Judge of the 3rd Circuit or is the Becker name just another "coincidental connection"? Please advise of any relationship you may have, if any, with Judge Becker.

Finally, your position as Chairman of the Ethics Commission of the Commonwealth of Pennsylvania provides me with the comfort of knowing you will answer my queries honestly and in a timely manner.

Very truly yours,

/s/

H. Gerard Heimbecker

Plaintiff cc: (via First Class Mail)

Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll

Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel

Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace

Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray

Joseph T.F.Quinn, Esq. District Justice 32-1-33

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
1-215-605-0368

April 10, 2003

The Honorable Edward R. Becker, Chief Judge
United States Court of Appeals for the Third Circuit
19613U.S.Courthouse
601 Market Street
Philadelphia, PA 19106

RE: H. Gerard Heimbecker v. 555 Associates, et al
No.01-CV-6140fE.D Pa.)

Dear Judge Becker:

I respectfully bring to the attention of your Honor the following information which impacts on the above captioned matter.

One of the defendants in the litigation is the law firm of Fox, Rothschild, O'Brien and Frankel. It's Chairman is Louis W. Fryman, Esq. who is also Chairman of the State Ethics Commission of the Commonwealth of Pennsylvania.

It has come to my attention that Mr. Fryman may be this Court's former law-partner. In addition, it has come to my attention there may also be a familial relationship between this Court and Mr. Fryman and I am inquiring of the Court the truth of the matter.

I posed the same question to Mr. Fryman and he has failed to respond. The courtesy of a reply will be appreciated.

Respectfully,
/s/
H. Gerard Heimbecker

Encl: Fryman Letter 3/15/03

H. Gerard Heimbecker
10 South Lynn Boulevard
Upper Darby, PA 19082
1-215-605-0368

February 26,2003

The Honorable Legrome D. Davis
United States District Judge
U.S. Courthouse 601 Market Street, Room 5918
Philadelphia, PA 19106-1797

RE: Preparation for Oral Argument
H. Gerard Heimbecker v. 555 Associates, et al
No.01-CV-6140(E.D.Pa.)
Motion to Recuse Pursuant to 28
U.S.C.A.§144

Dear Judge Davis:

In your order denying my previous Motion for Recusal, your honor raised the issue of your "extremely attenuated" contact with the law firm of Ballard Spahr Andrews and Ingersoll.

In determining whether your assertion was correct, I discovered additional information revealing what I believe to be an "extremely puissant" relationship between this court and Ballard Spahr which required the filing of a Motion for Reconsideration and the subsequent Writ of Mandamus.

In my previous correspondence, dated October 12, 2002 and November 16, 2002, I reiterated your answers in the sworn questionnaire you submitted to the Committee On The Judiciary of the United States Senate, regarding your employment at Ballard Spahr as follows:

Describe the general character of your law practice and indicate by date if and when its character has changed over the years. 18 (b) (1)

July 1987-November 1987: attorney. Ballard, Spahr, Andrews and Ingersoll. During this period ***I represented the interests of Raymark Corporation, a manufacturer of asbestos cloth, in depositions and trials in state and federal courts,***

Describe your typical former clients, and mention the areas, if any in which you have specialized. 18 (b((2)

Raymark Corporation, a manufacturer of asbestos blankets, was my sole client during my tenure at Bollard, Spahr, Andrews and Ingersoll.

Describe whether you appeared in court frequently, occasionally or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates. 18(c)(l)

I ***occasionally appeared in court*** *while employed at Bollard, Spahr, Andrews and Ingersoll.*

State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel or associate counsel. 18(c) (4)

I served as ***lead counsel*** *in all matters in which I* ***appeared*** *in court. I was counsel of record in several thousand bench trials and approximately seventy jury trials. (Emphasis added).*

In my letters of October 12,2002 and November 16,2002, I advised the court I was unable to verify your testimony regarding your court appearances described above and I respectfully requested the court provide me with the docket numbers and dates of your court appearances in the trials in state and federal courts where you appeared as the lead counsel for Ballard Spahr on behalf of the Raymark Corporation. On November 18, 2002,1 was advised by this court that further attempts to communicate directly with this court should be discontinued pending the disposition of the Writ of Mandamus pursuant to 28 U.S.C.A.§455. That issue is now moot and I respectfully renew my request for the information.

I have requested the information from Judge Becker, who as Chief Judge has a duty to know and take action, and he has failed to respond.

I have requested the information from Arthur Makadon, Esquire, your former employer, who knows the answer, and he has refused to respond in violation of his duties as a member of the bar and an officer of the court.

This court has ordered oral argument on my Motion to Recuse pursuant to 28 U.S.C.A.§144. With all due respect, how does this honorable court expect this litigant to execute an oral argument when this court itself has refused to provide the requested information, which is the core of my argument, for the past 138 days?

Responsibility for this issue rests solely with the court and, with all due respect, there is no "respectful" way to state the obvious. Here is my oral argument. Your Honor either lied or did not lie to the Senate Committee on the Judiciary regarding your career at Ballard Spahr and therefore, by necessity, Ballard Spahr, the object of the recusal in this case, did or did not cover up and/or orchestrate the falsification to the United States Senate on your behalf.

With all due respect, if you did not lie, please provide the docket numbers and dates of your court appearances in the trials in state and federal courts where you appeared as the

lead counsel for Ballard Spahr on behalf of the Raymark Corporation as stated in your sworn questionnaire you submitted to the Committee On The Judiciary of the United States Senate.

With all due respect, if you lied to the Committee then, in one of your first orders as a Federal Judge, you lied to me. In your order of July 3,2002, you described your relationship with Ballard Spahr as extremely attenuated. In fact, only an extremely close relationship would provide you the "cover" to falsify your career at the Ballard Spahr law firm and therefore, by necessity, Ballard Spahr, the object of the recusal in this case, covered up and/or orchestrated the falsification to the United States Senate on your behalf.

Finally, the Senate filibuster, against the vote on the confirmation of Miguel Estrada to be a federal judge, is raging for the third week. Make no mistake about it, if Miguel Estrada had lied to the Senate Judiciary Committee in his questionnaire, he would be run out of Washington on a rail. Early on in the debate, Senator Santorum asked Senator Hatch to describe what qualities the Committee looks for during the confirmation process. The first two words out of Senator Hatch's mouth were "honesty" and "integrity". This court fails on both counts. You were dishonest to the Senate, you were dishonest to me and you now lack the integrity to admit it. To quote Samuel Johnson, "Fraud and falsehood only dread examination. Truth invites it." With all due respect, you have a duty to provide the truth.

The courtesy of an immediate reply will be appreciated.

Respectfully,

/s/H. Gerard Heimbecker

Plaintiff cc: (via First Class Mail)
Geoffrey Kahn, Esq. Ballard, Spahr, Andrews & Ingersoll
Gerald Arth, Esq. Fox, Rothschild, O'Brien & Frankel
Samuel J. Pace, Jr., Esq. Dugan, Brinkman, Maginnis & Pace
Henry W. Clinton, Esq. Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray
Joseph T.F.Quinn, Esq. District Justice 32-1-33